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SUPREME COURT OF THE UNITED STATES.

No. ~~[illegible]~~ 109

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE UNITED STATES TREASURY DEPARTMENT, PLAINTIFF IN ERROR,

vs.

JOHN P. TWEED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOAEMBER 28, 1868.

Argument
Brief
for Defendant

SUPREME COURT OF THE UNITED STATES.

No. 308.

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE UNITED STATES TREASURY DEPARTMENT, PLAINTIFF IN ERROR,

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1 United States Circuit Court for the sixth circuit and eastern district of Louisiana:

Petition.—Filed May 28th, 1856.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,899.

To the honorable the judges of the United States Circuit Court for the sixth judicial circuit.

The petition of John P. Tweed respectfully shows and states, that your petitioner is a citizen of the State of Ohio; that Benjamin F. Flanders, who is a citizen of the State of Louisiana, is justly indebted to your petitioner in the sum of thirty-nine thousand three hundred and sixty dollars, for this, to wit:

That on or about the sixth day of March, eighteen hundred
2 and sixty-six, your petitioner was the owner of four hundred and ninety-five bales of cotton, then being in the city of New Orleans.

That at said time Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, unlawfully seized and took said cotton into his possession, and unlawfully detained the same unti lthe fifteenth day of May of said year, when your petitioner, under and by virtue of two several writs of sequestration in two suits instituted in this honorable court, wherein your petitioner is plaintiff, and the said Flanders, defendant, obtained possession of said cotton; that in his petition in each of said suits to recover possession of said cotton, your petitioner expressly reserved the right to institute suits to recover damages for the seizure and detention of the same.

That during said period, from said sixth day of March to
3 said fifteenth day of May, said Flanders unlawfully withheld from your petitioner's possession his said cotton, during which period the value of said cotton declined to the amount of thirty thousand dollars.

That, in consequence of said unlawful detention of said cotton, your petitioner was compelled to pay and did pay interest to the amount of one hundred and sixty dollars insurance to the amount of two hundred dollars, and storage to the amount of one thousand dollars.

That by reason of said suits which your petitioner was compelled to institute and did institute to recover possession of his said cotton, and in the prosecution of the same, your petitioner was compelled to pay and did pay counsel fees clerk's fees and marshal's fees to the further amount of seven thousand dollars.

That while said Flanders was wrongfully in possession of
4 said cotton, and was wrongfully detaining the same from the possession of your petitioner, he caused fifty bales of the same to be sent from the warehouse wherein said fifty bales were stored, and to be rebaled, whereby said fifty bales was diminished in weight

and was diminished in value in the further sum of one thousand dollars.

Wherefore your petitioner prays that the said Benjamin F. Flanders may be cited to answer this petition, that after due proceedings judgment may be rendered in favor of your petitioner, and against the said Benjamin F. Flanders, for the said sum of thirty-nine thousand three hundred and sixty dollars, besides the costs of this action, and for all general and special relief.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Att'ys for Petitioner.

[50c. int. rev. stamps, affixed and cancelled.]

5 *Citation.*

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,899.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Benjamin F. Flandsrs, a citizen of the State of Louisiana, to comply with the demand of John P. Tweed, a citizen of the State of Ohio, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is dis-
6 tant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of July, 1866.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 28th day of May, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

[SEAL.] (Signed) CHARLES CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

Marshal's return.

Received May 28th, 1866, and on the same day, month and year, served a copy of the within citation and the plaintiff's petition accompanying the same, on B. F. Flanders, the defendant named
7 herein, personally, at his office corner of Crossman and Levee streets, in this city.

New Orleans, May 29th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Circuit Court of the United States for the fifth judicial circuit holding sessions in and for the district of Louisiana.

Commission for plaintiff, issued January 11th, 1867, returned and filed February 16th, 1867, in cases No. 3,857 and 3,899.

To Nathaniel Appleton, esq., or any U. S. commissioner in New York, or to any officer authorized to administer oaths:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you J. P. Tweed and Charles A.
8 Goodwin, witnesses, and them duly examine on the annexed interrogatories on oath, touching and concerning certain matters and things in the causes now depending in the said court, wherein John P. Tweed is plaintiff, and Benjamin F. Flanders, is defendant; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 11th day of January, anno Domini, 1867, and the 91st year of the independence of the United States of America.

[SEAL.] (Signed) CHAS. CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

9 United States Circuit Court for the fifth judicial circuit, holding its sessions in the district of Louisiana.

Interrogatories-in-chief.

JOHN P. TWEED
vs.
BENJAMIN F. FLANDERS. } Nos. 3,857 and 3,899.

Interrogatories to be propounded to J. P. Tweed, Charles A. Goodwin to be examined in the city of New York. Witnesses to be produced, sworn and examined on behalf of the plaintiff herein.

Interrogatories to be propounded to J. P. Tweed, plaintiff herein:

1st. What is your name, age, and occupation?

2d. Did you, on or about the day of , 1865, enter into a contract with the government for the purchase of government cotton? If yea, state whether that contract was carried out. If that contract was not carried out, state whether anything,
10 and what, prevented.

3d. How was said contract terminated? If you say it was revoked, state fully and particularly when, where, and by whom did you learn of its revocation.

4th. Did you, during the early part of the year 1865, purchase a lot of cotton amounting to about four hundred and ninety-five (495)

bales, of which the one hundred and twenty-three (123) bales sequestered in this suit formed a part? If yea, where, when, and when compared with the time you learned of the revocation of said contract, if you say it was revoked, at what price, and how did the price you paid compare with the market price? If you made such purchase, did you, before making the same, confer with any officer of the government of the United States. If yea, state what officer,
giving his official position, and state what transpired at such
11 conference, or what was its result.

5th. If you say you purchased such a lot of four hundred and ninety-five (495) bales of cotton, state to whom you shipped it, and what you did in connection with such shipment. If you say you shipped it to Oscar H. Burbridge, state under what circumstances, and what his action was with reference to the same.

6th. Give in detail a statement of the action of the defendant, Benjamin F. Flanders, with reference to said cotton, and of your own in connection with it.

7th. State whether you sustained damage by defendant's seizure and detention of said cotton. If yea, state, if you can, the amount of damage which you sustained, giving the various items of such damage.

8th. State any other matter or thing which may make for the benefit of yourself, the plaintiff herein, as fully and minutely as if
12 you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Pl'ff's Att'ys.

No cross-examination.

(Signed) P. H. MORGAN,
U. S. Attorney.

Interrogatories to be propounded to Charles B. Goodwin:

1st. What is your name, age, residence, and occupation?

2d. Do you know the parties, plaintiff and defendant, herein, and if so, how long have you known them?

3d. Do you know of the plaintiff purchasing about four hundred and ninety-five (495) bales of cotton, a portion of which has been sequestered in this suit? If yea, were you instrumental in making such purchase. State all you know about the price paid for said cotton.

4th. Do you know any thing about the history of said cotton prior to such purchase? If yea, state fully and in detail
13 all you know of such history.

5th. State any other matter or thing which may make for the benefit of the plaintiff herein, as fully and minutely as if you had been particularly with reference to the same.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Att'ys for Plaintiff.

No cross-examination.

(Signed) P. H. MORGAN.
U. S. Att'y.

Testimony taken under commission.

Depositions of witnesses produced, sworn and examined by virtue of the annexed commission on the 8th day of February, in the year of our Lord one thousand eight hundred and sixty-seven, at the city of New York, in the county and State of New York, before me, Nathaniel Appleton, a commissioner named in said commission, in certain causes now depending in the Circuit Court of the
14 United States for the fifth judicial circuit, in and for the district of Louisiana, between John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, on the part of the said plaintiff.

John P. Tweed, being produced and publicly sworn, answers as follows to the interrogatories propounded in these causes :

First. To the first interrogatory he saith : My name is John P. Tweed ; my age, sixty years, and occupation, merchant.

Second. To the second interrogatory he saith : I did enter into a contract with O. H. Burbridge, supervising special agent of the Treasury Department for the ninth agency for the purchase of government cotton. The contract is on file among the papers in those cases. That contract was never carried out. The contract contained a provision that it was to be subject to the revocation of the Secretary of the Treasury. After going to Shreveport I learned that the
15 Secretary of the Treasury had or would revoke the said contract, and this prevented my doing any thing under said contract. I would add that I found at Shreveport that other contracts had been made between other parties and the Secretary of the Treasury, which would have made it impossible for me to do any thing under my contract, as my contract related only to government cotton concealed from the knowledge of agents appointed by the U. S. government to collect the same ; and these other contracts allowed the contracting parties to take even half of all cotton they could show to belong to the so-called "confederate government," and these parties I found had seized all or nearly all the suspected cotton ; and much of this cotton suspected of belonging to the so-called "confederate government," and which had been seized by parties
16 holding contracts under the U. S. government, had to be released, there not being found sufficient evidence to condemn the same ; so that had the Secretary not revoked the contract I could have done nothing under mine ; and, from what purports to be a certified copy of said contract, which is hereto annexed, and marked exhibit "A," it appears that said contract was entered into under date of January 23, 1866.

Third: To the third interrogatory he saith: The said contract was revoked or annulled by General S. G. Burbridge, local treasury agent at Shreveport, La., at that time; the said Burbridge acting under orders given by Col. Oscar H. Burbridge, supervising special treasury agent at New Orleans; the said Burbridge acting by directions of the Secretary of the Treasury. I learned of the revocation of said contract a few days prior to the purchase of the 495 bales
17 of cotton, for a portion of which one of these suits is brought;

the bills of sale of the cotton filed in these suits will show when I made the purchases; a few days before I purchased any of this cotton, General S. G. Burbridge, the local treasury agent at Shreveport, La., informed me, at that place, that said contract had been or would be revoked.

Fourth: To the fourth interrogatory he saith: I did purchase several lots of cotton, which in the aggregate made 495 bales, of which the cotton sequestered in one of these suits is part. In the month of March, 1866, at or near Shreveport, La., all of the purchasers of said 495 bales of cotton were made, and after I had learned that my contract had been or would be revoked as before stated: the bills of sale of said cotton filed in these suits will show the time of purchase; the price I paid was the full marketable value in gold at the
18 time, and place of purchase for cotton of similar quality, about which there was no dispute as regards title; for price and time of purchase I refer to the invoices filed in these suits. I did confer with an officer of the United States government before making any such purchases, namely with General S. G. Burbridge, the local treasury agent at Shreveport, La.; I told him of these lots of cotton, making in all the 495 bales of cotton spoken of above. I asked him if the U. S. government had any claim to these cottons; he said they had not any that would hold, and that it would be safe for me to purchase them; the result was that I purchased said cotton as before stated.

Fifth: To the fifth interrogatory he saith: I shipped said 495 bales of cotton, consigned to Oscar H. Burbridge, the supervising special treasury agent at New Orleans, with instructions to him to turn over 200 bales of the said cotton to Messrs C. A. Weed & Co.,
19 and the remaining 295 bales thereof to Messrs Scott, Cage & Co., for my account; and further informed him, that being at Shreveport and having funds, I had invested them in private cotton, and further, that I shipped the said 495 bales of cotton to him in order that the U. S. government might know exactly when and what I purchased, and upon what terms, and that I had done nothing under my contract. O. H. Burbridge informed me that, in his opinion, there was no doubt but that I had acted correctly, and that the cotton belonged to me, and that the U. S. government had no claim to it; but he said that he had been superseded by B. F. Flanders, who had taken possession of the cotton, and he (Burbridge) had no control over it. I will further say that said Burbridge did at various times and in my presence use his influence with
20 said Flanders to induce him (Flanders) to release said cotton to me, on the ground that the U. S. government had no just claim to it.

Sixth: To the sixth interrogotory he saith: The said 495 bales of cotton, upon its arrival at New Orleans, was taken possession of by the defendant, Benjamin F. Flanders; for six weeks or thereabouts, he refused to deliver me any portion of it; he then gave me an order for ($\frac{3}{4}$) three-fourths of it, which order for the said ($\frac{3}{4}$) three-fourths I received under a written protest, claiming in said protest to be

entitled to the possession of the whole of said cotton; at the time of giving me the said order for the (¾) three-fourths of the cotton as aforementioned, the said Flanders promised me, that he would retain in his possession the remaining (¼) one-fourth of said cotton
21 until I could submit the matter to the Secretary of the Treasury. Finding that, in violation of his agreement with me, he was about to ship the said (¼) one-fourth to New York, I sequestered it; thereupon he, the said Flanders, through and by the aid of the military authorities, seized and took into his possession the said (¾) three-fourths of said cotton, which he had admitted to be mine, and which had upon the aforementioned order been transferred to me on the books of the warehouses where the same was stored; I then obtained a writ of sequestration for this (¾) three-fourths, and, under the orders of the President the cotton was delivered to the U. S. marshal in obedience to the writ. Mr. Flanders, the defendant, kept me out of the possession of my entire lot of 495 bales of cotton for nearly two months.

Seventh: To the seventh interrogatory he saith: I did sustain damages by defendant's seizure and detention of said cotton. The items are as follows:

Decline in value of cotton	$30,000 00
22 Insurance premiums for time defendant held said cotton	160 00
Storage during same period	1,000 00
Counsel fees paid in the two suits, for the one quarter and three quarters	6,000 00
Clerk's fees and marshal's fees paid in said two suits	1,126 13
Special damage to 50 bales of said cotton which defendant had taken out of warehouse and passed through a pickery	1,000 00
	$39,286 13

Eighth: To the eighth interrogatory he saith: I did on various occasions, in the presence of Mr. J. P. Sullivan and others, offer to said Flanders to give him ample security for the value of the whole of said cotton, for the purpose of selling the same at once, as the market at that time was daily declining, in order to save the
23 loss which would and did occur by his further holding it, which offers said Flanders peremptorily refused to accede to; that said loss by reason of the depreciation in value of said cotton did occur together with the expense incurred by its detention, as stated more fully in answer to the seventh interrogatory.

(Signed) J. P. TWEED.

Examination taken, reduced to writing and by the witness subscribed and sworn to, this 8th day of February, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

Exhibit "A."

[Copy.]

Copy of contract marked exhibit "A," and annexed to foregoing depositions:

Whereas it is represented that large quantities of cotton which formerly belonged to the late so-called confederate States, are now in possession of individuals in the Red River country, con-
24 cealed from the knowledge of agents appointed to collect the same, and that the marks by which former ownership could have been proved, have been destroyed for the purpose of enabling the individuals holding it to convert it to their own use: And whereas it is also represented that most of this cotton is held at places and in districts remote from military posts, so that if it could be found and identified, it could not be brought forward by the agents, except by incurring the expense of obtaining military force to aid in its removal; and that the parties holding it, dare not bring it within the reach of civil or military authorities, for fear that its true character may be discovered, thereby causing its seizure:

And whereas it is also represented that a large portion of this cotton can be purchased from the holders at much less than its
25 real value, if the purchaser will take the title at his own risk of seizure by government authorities: Now therefore it is hereby agreed by and between John P. Tweed, of Cincinnatti, Ohio, and Oscar H. Burbridge, supervising special agent, appointed by the Secretary of the Treasury to collect captured cotton in the third agency, as follows, viz:

Said Tweed hereby agrees to furnish all money necessary to purchase the cotton aforesaid, together with all the assistants necessary for the purpose, and all requisite means of transportation. and to use all proper efforts to purchase as much of said cotton, situated upon and near the Red river and its tributaries, as can be purchased, prepared for shipment, and transported to and delivered at New Orleans, at a cost of not exceeding three-fourths its market value there,
26 and to deliver the same to said Burbridge in New Orleans, in good shipping order, with receipted bills of sale thereof from the holders, free and discharged of all cost of purchase, expense of preparation for shipment, or of transportation or otherwise connected therewith.

Said Burbridge hereby agrees that upon the delivery to him as aforesaid of each bale of cotton so purchased, with receipted bills of sale thereof from the holders, and free and discharged of all cost and expense of purchase, preparation for shipment, transportation or otherwise relating thereto, he will pay and deliver to said Tweed three-fourths of the same, of average quality, as compensation in full for his services, and for all cost of purchase, expense of preparing the same for shipment or for transportation, or otherwise incurred him in relation thereto. Such payment and delivery to be considered

as a sale by the United States, so that the cotton so paid, and delivered to said Tweed shall not be subject to the payment of internal revenue by him or by his assigns, or in case it shall be so held, then said internal revenue shall be paid by said Burbridge.

It is further mutually agreed, that this contract shall be by said Burbridge promptly submitted to the Secretary of the Treasury for his approval; and that if it shall not be approved by him, said Burbridge shall immediately notify said Tweed thereof, and the contract shall thereupon be terminated. But any cotton which shall have been purchased by said Tweed before the receipt of such notice shall be faithfully forwarded by him to said Burbridge, and delivered under this contract, subject however to the payment by him of the three-fourths thereof in manner aforesaid.

It is also mutually agreed, that this contract shall at all times be subject to revocation, by the Secretary of the Treasury or by his direction, such revocation to be made subject to the completion of any transactions previously commenced under it, in accordance with the provisions herein contained.

In witness whereof we have hereunto set our hands this 23d day of January, 1866.

(Original signed) O. H. BURBRIDGE,
Sup. Spec. Ag't 3d Agency T. D.

Circuit Court of the United States sixth circuit and eastern district of Louisana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of a certain original document this day exhibited to me.

Witness my hand and seal of said court at New Orleans, this 26th day of July, A. D. 1866.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Witness—

(Signed) J. P. TWEED.

[5-c. int. rev. stamp affixed and cancelled.]

At the execution of a commission for the examination of witnesses between John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, this paper writing was produced and shown to John P. Tweed witness, and by him deposed unto at the time of the examination before me.

(Signed) NATH'L APPLETON, *Commissioner.*

Deposition of Benj. H. Epperson, a witness, taken by consent before me Nath'l Appleton a commissioner named in the annexed commission on the 8th day of February, one thousand eight hundred and sixty-seven, at the city of New York, in the county and State of New York, in certain causes now depending in the Circuit

Court of the United States for the fifth judicial circuit in and for the district of Louisiana, between John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, on the part of the said plaintiff.

STATE OF NEW YORK, *City and County of New York, ss*:

Benjamin H. Epperson being produced and publicly sworn, doth depose and say: I reside at Clarksville, Red river country, Texas; attorney at law by profession, and 42 years of age. I am acquainted with the plaintiff in these suits. First became acquainted with the plaintiff in the spring of 1866, at Shreveport, La. I was then at Shreveport, acting in the capacity of attorney for various owners of cotton there stored at Shreveport. This cotton was the property of private individuals who were residing in the State of Texas. In the month of March, or thereabouts, I sold to Mr. John P. Tweed,
31 the plaintiff in these suits about 417 bales of said cotton, through the plaintiff's agent for that purpose, Charles E. Goodwin. One lot of this cotton was, according to my reccollection, 405 bales, belonging to Wm. B. Aiken, who resides near me in Red River county, Texas, and who is and has been for many years well known to me. This lot of cotton was stored at Jefferson, Texas; a part with Mr. Terry, and the remainder with Wright Harrison & Co., commission merchants. Charles T. Turnbull was a treasury agent of the United States to collect abandoned or confiscated property, and especially cotton which had been the property of the confederate States, and was stationed at Jefferson, Texas. He or some one of his predecessors had issued an order that all parties who had cotton stored at Jefferson should, by a certain time, file in his office the affidavit
32 of the produce of the cotton, showing the same to have been raised by him, and never disposed of to the confederate States, or to any of its agents, nor to any State in rebellion against the government of the United States. Mr. Aiken lived about one hundred miles from Jefferson, where his cotton was stored, and not knowing of this requirement, and of course failed to file such an affidavit. For this failure Turnbull seized this cotton by force, and shipped it to Shreveport and had it stored. As soon as Mr. Aiken was notified that his cotton had been seized he engaged me to accompany him to Shreveport and to assist in getting possession of the cotton. In Jefferson I called upon Mr. Turnbull and asked him upon what grounds he had seized Mr. Aiken's cotton. He said that it was because he, the said Aiken, had failed to file the affidavit as
33 above stated, and said that Aiken's merchants were to blame, because they had not notified Mr. Aiken of this order.

I asked him to give me a letter to General Burbridge, who was the local treasury agent at Shreveport, and who then had possession of the cotton, stating these facts to him. This he declined to do, alleging that he was unable to write, then being very sick; but stated that a letter from Mr. Homer B. Hawkins who was acting either as clerk or assistant of the said Turnbull, and was in the office where all the business was transacted, would answer my purpose. Mr. Turnbull was in his room at the hotel and was very ill, not expected to recover.

Mr. Hawkins gave me a letter to General Burbridge, stating in it that there was no evidence against the Aiken cotton showing it to be government property, but that the cotton had been seized because of the failure to comply with the order above alluded to.

34 Notwithstanding this letter General Burbridge declined to release the cotton, upon the ground that the letter ought to have come from Turnbull himself. After trying for several days to get the cotton released and failing, and concluding that the cotton was held simply to levy black mail upon the owner—fifteen bales had been lost in removing it from Jefferson to Shreveport—and unable to fix the responsibility of loss upon any person, and Mr. Tweed having offered me what I believed to be a fair price for the cotton, and to take the chances to recover the fifteen bales lost, and to pay all charges, including attorneys' fees, I advised a sale to him, which was made. Mr. Tweed bought the cotton with the understanding that the title to it was good, and that the United States had no just claim to it, and that it had been seized under the circumstances above stated, and was held, in my opinion, merely for the purpose of exact-

35 ing black mail; a part of the price of the sale which was considered by me in making or advising the sale was the heavy charges which had been incurred by the seizing and shipping the cotton from Jefferson to Shreveport, the loss of fifteen bales, and the damage done so the cotton from the manner it had been handled. The cotton was sold according to the warehouse receipts for it at Jefferson, and not by actual weight. In a few days after the sale of the Aiken cotton I also sold to the said Tweed, through his agent, Mr. Goodwin, twelve other bales of cotton which belonged to a Mr. John L. Carroll, who also lives in Red River county, Texas, and which was seized under similiar circmstances at Jefferson, and shipped to Shreveport. I live near Mr. Carroll and Mr. Aiken and know them both well, and know that they raised the cotton above

36 alluded to in Red River county, Texas; and I further know that the said cotton was never in the possession of any agent of the confederate States, and was never claimed by any such. Had it ever been sold to the confederates or any of its agents, I would, from my intimacy with the parties, their agent and attorney, known something of it. I also know Mr. Tweed, through his agent, Mr. Goodwin, bought two other lots of cotton about the same time; one of which was from Mrs. Mary L. Boyce, who resides in the same town I do, and with whom I am well acquainted. This lot was forty bales, I think; Mrs. Boyce was at Shreveport, and I advised her to sell at the price offered. I was not her agent or attorney, but as a friend advised the sale. Her cotton had been seized in Bowie county, Texas, and hauled upon wagons to Jefferson. Mr. Tweed paid Mrs. Boyce including the expenses which had accrued

37 on the cotton, the full marketable value in gold. I also know of Mr. Tweed's buying 32 bales from a Mrs. Boyd of Bowie county, Texas. I have no personal knowledge of the details of this trade. I knew that the lot of cotton bought of Mrs. Boyce was raised by her, and had never been out of her possession until it was

seized by the order of C. T. Turnbull, and that it had never been claimed by the confederate States or any of its agents. Mr. Turnbull seized almost all the cotton in that vicinity about this time, and no person who had any considerable quantity escaped seizure under some pretext. It was well understood that this was done to extort money from the owners, and scarcely a single person could get his cotton released without paying something for it. Whenever he ascertained that any one had any considerable quantity of cotton
38 he seized it and moved it by a military force, managing to lose a considerable portion in the transportation. As above stated I reside in Texas, but am in this city upon business. I do not know anything further to the advantage of either party, that I can now call to mind.

(Signed) BENJ. H. EPPERSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 8th day of February, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

Charles E. Goodwin (called in the commission Charles A. Goodwin) being produced and publicly sworn, answers as follows to the interrogatories propounded in these cases:

First. To the first interrogatory he saith: My name is Charles E. Goodwin; my age, 26 years; my residence, New York city; my occupation, trader.

39 Second. To the second interrogatory he saith: I know the plaintiff in these suits. Have been acquainted with him for about two years. I also know the defendant in these suits, and have been acquainted with him for about three years.

Third. To the third interrogatory he saith: I do know of the plaintiff purchasing four hundred and ninety-five bales of cotton, in or about the month of March, 1866, and a portion of which is sequestered in one of these suits. I was instrumental in the purchase of the said cotton, with the exception of about four bales. I was acting at that time as agent of Mr. Tweed for that purpose. For four hundred and five bales of said cotton purchased at Shreveport, belonging to Mr. W. B. Aiken, of Red River county, Texas, and was contracted for through Mr. B. H. Epperson, the attorney of Mr. Aiken,
40 the plaintiff paid eighty dollars per bale in gold. For twelve other bales of said cotton also purchased at Shreveport and contracted for through the said Epperson, and belonging to Mr. John L. Carroll also of Red River county, Texas, the plaintiff paid sixty dollars per bale in gold; there being heavy charges upon said cotton, which we assumed to pay and did pay, together with charges and expenses on account of the seizing and shipping of the cotton from Jefferson to Shreveport, and also paying storage on said cotton and attorney's fees, and taking also into account the damage to said cotton

from the manner in which it had been handled, and that some fifteen bales contracted for had been lost or stolen after it had been taken from the warehouses at Jefferson, made, with the prices paid per bale, the full market value at that time and place. Also
41 bought at Shreveport of N. C. Gould, attorney for Mrs. Mary L. Boyce forty bales of said cotton, for which the plaintiff paid eighty-five dollars per bale in gold, together with the expenses of transportation by wagon from Clarksville, Texas, to Jefferson, thence per steamboat to Shreveport and also warehouse expenses, amounting to in the aggregate to its full marketable value at that time and place. I also purchased at Jefferson, Texas, of S. G. Mosely, attorney for Mrs. W. A. Boyd, 32 bales of cotton, for which plaintiff paid sixty dollars per bale in gold, together with the transportation from Clarksville, Texas, to Jefferson; thence by steamboat to Shreveport, also storage, commissions, and repairs upon said bales, making, as in the other cases, full market value for said cotton at the time and
42 place of purchase. I also purchased at Jefferson, Texas, of A. T. Hanson, acting for a Mr. Whitfield 23 bales of cotton, for which was paid sixty dollars per bale, and also the expenses of transportation to Shreveport, storage and commissions upon said cotton, making in all the full market value at that time and place. The 495 bales of cotton referred to in the third interrogatory were all that was received from the aforesaid purchasers.

Fourth. To the fourth interrogatory he saith: I know nothing of the history of aforementioned cotton, with the exception of what was told me by the local treasury agents at Jefferson, Texas, and Shreveport, La. Mr. C. T. Turnbull, acting as local treasury at Jefferson, Texas, informed me, in relation to all the lots of cotton hereinbefore referred to, that he had no proofs against the
43 said cotton by which the government could hold it, and that it would be safe for me to purchase, and that for a consideration per bale, he would release the cotton from seizure. Before purchasing the Aiken and Boyce cottons at Shreveport, I called on General Burbridge. I inquired of him if I could buy these lots of cotton with safety, without trouble from the government. He replied that I could purchase with safety, as the government had no claims by which it could be held, and he would have to release the same, there being no proofs against it.

Fifth. To the fifth interrogatory he saith: Mr. Tweed, the plaintiff, had entered into a contract with O. H. Burbridge, under date of January 23d, 1866, for the purpose of purchasing cotton which was concealed from the knowledge of the agents of the United States who had been appointed to collect the same. By this contract
44 one-fourth of all cottons purchased under it were to be secured to the United States. I went to Shreveport, La., about the 1st of March, 1866, as an agent for Mr. Tweed, for the purpose of purchasing cottons under the contract. I also visited Jefferson, Texas, for like purpose. Before I had any opportunity of purchasing any cotton under that contract I was informed by General S. G. Burbridge, that the contract before mentioned had been, or would

be revoked by the Secretary of the Treasury. I also was informed by Mr. Tweed of the same fact before making any purchases of cotton. In consequence of this information from General Burbridge and Mr. Tweed, I did not attempt to purchase any cotton of the character referred to in the contract. All the cotton which I have before mentioned as having been purchased at Jefferson and Shreve-
port, and of which the 495 bales referred to heretofore was
45 all that was received therefrom, were bought without any reference to said contract. I will also add that it would have been impracticable to have done anything under the above-mentioned contract, as I found at Shreveport other parties who had contracts with the Secretary of the Treasury, allowing them one half of all cotton they could show to have belonged to the so-called confederate government. These parties had already seized all, or nearly all the cotton suspected of belonging to the confederate government. I will further state, that under these last-mentioned contracts, the remaining one half of the cotton therein referred to went to the United States government, therefor, under these circumstances it was impossible to act under Mr. Tweed's contract, as it left no intermediate ground to be covered by his contract. It was, therefore, abandoned.

(Signed) CHAS. E. GOODWIN.

Examination taken, reduced to writing, and by the witness
46 subscribed and sworn to, this 8th day of February, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

I, Nath'l Appleton, commissioner, do hereby certify that John P. Tweed, Charles E. Goodwin and Benjamin H. Epperson, the deponents, were by me severally sworn to declare the truth on the questions put to them in these causes; that the interrogatories were produced to the said Tweed and Goodwin, and their answers thereto, together with the deposition of the said Epperson, taken in writing, and subscribed by them respectively, in my presence, on the day and at the place in that behalf first aforesaid.

In testimony whereof, I have hereunto set my hand and seal, at the city of New York, on the 8th day of February, one thousand eight hundred and sixty-seven.

[SEAL.] (Signed) NATH'L APPLETON,
Commissioner.

47 I certify that my fees as commissioner in these suits are seventy-five dollars.

[SEAL.] (Signed) NATH'L APPLETON,
Commissioner.

Judgment by default.

Extract from the minutes, November term, 1866:

NEW ORLEANS, *Wednesday, February 6th*, 1867.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3,899.

On motion of Sullivan, Billings and Hughes, attorneys for plaintiff, and on showing to the court that the defendant herein has failed to answer although duly cited, ordered, that judgment by default be entered against him.

Order.—Default set aside.

48 Extract from the minutes of February 7th, 1867:

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3,899.

On motion of John S. Whitaker, attorney for the defendant, and upon filing his answer, ordered that the judgment by default, taken on 6th instant, be set aside.

United States Circuit Court.

Answer.—Filed February 7th, 1867.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3,899.

And now comes B. F. Flanders, defendant, and admits that at the time stated in petition he was deputy general agent of the Treasury Department of the United States; and further answering, denies all and singular the allegations in plaintiff's petition contained,
49 and denies all indebtedness to said plaintiff; and prays to be hence dismissed with costs, and for all general relief.

(Signed) J. S. WHITAKER.
" HORNOR & BENEDICT,
Att'y's for Def't.

Order.—Cause continued.

Extract from the minutes of February 20th, 1867:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,899.

This cause was called and ordered to be continued indefinitely.

United States Circuit Court district of Louisiana.

Stipulation.—Agreement of counsel as to commissions.—Filed February 23d, 1867.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

SAME
vs.
50 SAME. } No. 3,899.

A commission may issue to Jefferson to examine Wright; to Clarksville, Texas, to examine J. L. Carroll, E. P. Epperson, Mrs. Eliza Boyd, J. R. Moss and Samuel F. Moults and William B. Aiken, upon interrogatories crossed by the plaintiff. The testimony may be used in each of the above-entitled cases. The affidavit, &c., to obtain commission is waived, as well as all matters of mere form, and reserving all objections to competency or relevancy of evidence and all legal objections.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of counsel for plaintiff.

(Signed) WHITAKER & STUART,
Of counsel for defendant.

51 Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

Commission for defendant, issued February 25th, 1867, returned and filed April 23d, 1867, in cases Nos. 3,257 and 3,899.

To James G. Blanchard or William Ellet, at Clarksville, Texas:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you J. L. Carrol and others, witnesses, and them duly examine on the annexed interrogatories on oath, touching and concerning certain matters and things in two cases now depending in the said court, wherein John P. Tweed is plaintiff and Ben-

jamin F. Flanders is defendant, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence
52 on the trial of said causes, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 25th day of February, anno Domni 1867, and the 91st year of the independence of the United States of America.

[SEAL.] (Signed) CHAS. CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

United States Circuit Court district of Louisiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,899.

SAME
vs.
SAME. } No. 3,857.

Interrogatories to be administered to J. L. Carroll, of Clarksville, Texas, witness to be examined on the part of B. F. Flanders, defendant in the above-entitled cause.
53

First. Please state your name, residence, and business or profession.

Second. Do you know either, and which, of the parties named in the caption of this suit? If you know the plaintiff, state when and where you first knew him.

Third. Did you, or either of you, at Jefferson, Texas, on or about the 8th of March last, own or control 12 bales of cotton marked A. L., which were purchased by one Charles E. Goodwin? By whom was the sale made? What price was paid by Goodwin?

Fourth. Was the said cotton, or any, and, if any, what portion of the same, under seizure by the agents of the Treasury Department before and at the time of the sale to Goodwin? Under what plea or pretence was the same seized and held? If you shall state
54 that it was so seized and held, on a charge that it was confederate cotton, and therefore the property of the United States, please state if you know whether said Goodwin, (or the plaintiff, if he was there,) knew that it was so under seizure under the charge aforesaid.

Fifth. Do you know whether the plaintiff or said Goodwin claimed or represented that they, or either of them, purchased the same under authority of any contract or authority with the Treasury Department of the United States to buy confederate cotton under seizure or otherwise? State fully what representations were made to you by either Goodwin or the plaintiff on the subject.

Sixth. What was the market value at Jefferson aforesaid at the date of the sale of this cotton, if it had been free of any charge of

seizure? Was the price at which you sold influenced in any degree by the embarrassments resulting from the seizure and charge,
55 and how was it influenced; to what extent also?

Seventh. Can you state any other matter or fact within your knowledge which may be of benefit or advantage to the defendant in this suit; if so, please state the same as fully as if you were here specially interrogated thereunto?

Eighth. The said B. H. Epperson is especially further interrogated as to whether, at Shreveport in Louisiana, on or about the first of March, 1866, as the attorney or agent of one W. B. Aiken, he knew of the sale to the said plaintiff or to said Goodwin of a certain lot of 386 bales of cotton, or thereabouts, or any other amount, claimed as the property of said W. B. Aiken; if so, what price was paid for said cotton per bale?

Ninth. What portion of cotton was then, and before then, under seizure by the agents of the Treasury Department of the United States? Where was it deposited? Under what representa-
56 tions was the cotton bought and sold? What authority, if any, did the plaintiff or said Goodwin claim to be possessed of to buy cottons under seizure by the Treasury Department or to buy confederate cotton? What influence, if any, had the seizure aforesaid upon the price received for said cotton? What was the value at Shreveport aforesaid of said cotton per bale if it had been free of seizure by the treasury agents? Was it represented by said Goodwin or the plaintiff that he had any peculiar advantages over other citizens in purchasing said cotton whilst it was under seizure?

(Signed) WHITAKER & STUART,
Of counsel for def't.

United States Circuit Court district of Louisiana.

Cross-interrogatories.

JOHN. P. TWEED
vs. } No.
B. F. FLANDERS.

57 Cross-interrogatories administered to J. L. Carroll and E. P. Epperson, of witnesses to be examined on the part of plaintiff on the above-entitled cause.

First cross-interrogatory. If you say you sold cotton to plaintiff or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

Second cross-interrogatory. Do you know the history of said cotton, and did the same, or any portion thereof, ever belong to the so-called confederate government? Was not the only ground upon which said cotton could be justly held by the treasury officers, that it was, along with all the cotton in that region, captured property.

Third cross-interrogatory. If you say that plaintiff or his said agent spoke of said contract, did he not in substance represent

58 that he had a contract with the government for the purchase of cotton which had belonged to the confederate government?

Fourth cross-interrogatory. State any other matter or thing which will make for the benefit of the plaintiff as fully as if you had been particularly interrogated in relation thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel of Plaintiff.

United States Circuit Court, district of Louisiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
B. F. FLANDERS.

Interrogatories to be administered to Mrs. Eliza Boyd (executrix of the last will and testament of William H. Boyd, deceased, of Bowie county, Texas,) and to J. R. Moss and Samuel F. Moults, of witnesses to be examined on the part of B. F. Flanders, defendant in the above-entitled cause.

First. Please state your name, residence, and business or
59 profession.

Second. Do you know either, and which of the parties named in the caption of this suit? If you know the plaintiff, state when and where you first knew him.

Third. Did you, or either of you, at Jefferson, Texas, on or about the 5th of March, 1866, own or control (and in what capacity) certain thirty-two bales of cotton, marked W. H. B., which were purchased by one Charles E. Goodwin? By whom was the negociation and sale conducted and made, and in what capacity did you make said sale? What price was paid by said Goodwin or the plaintiff?

Fourth. How many bales of cotton did you sell at that time to said Goodwin or Tweed, (if any?) Where were the same stored or deposited at the time? What portion of the same, if any, were under seizure by any agent or agents of the Treasury Department of the United States before and at the date of said sale? Under
60 what plea or pretense were the same seized or held, and by whom? Name the agent or agents. If you shall state that it was so seized and held under a charge that it was confederate cotton, and therefore the property of the United States, please state, if you know, whether said Goodwin (or the plaintiff if he was there) knew that it was so under seizure, under the charge aforesaid.

Fifth. Do know whether the plaintiff or said Goodwin claimed or represented that they, or either of them, purchased said cotton under authority of any contract with the Treasury Department of the United States to buy confederate cotton under seizure or otherwise; or state fully what representations were made to you by either Goodwin

or the plaintiff on the subject of their authority to purchase confederate cottons, or such as were claimed to be.

Sixth. What was the market value at Jefferson aforesaid,
61 at the date of the sale of this cotton, if it had been free of any charge or seizure as aforesaid? Was the price at which you sold influenced in any degree by the embarrassment resulting from said charge and seizure, and how was it influenced? also state to what extent.

Seventh. Have you a duplicate of the receipt given by Mrs. Boyd, signed by J. R. Moss as her agent, and by Samuel F. Moults as her attorney, for the cash payment made by said Goodwin of $1,920 in specie, dated the 5th of March, 1866, at Jefferson? If so, please annex it, or a copy duly marked or authenticated, and let the commissioner annex it to your answers.

Eighth. Can you state any other matter or fact within your knowledge which may be of benefit or advantage to the defendant in this suit? If so, please state the same as fully as if you were here specially interrogated thereunto.

(Signed) WHITAKER & STUART,
Of Counsel for Def't.

62 United States Circuit Court, district of Louisiana.

Cross-interrogatories.

J. P. TWEED
vs.
B. F. FLANDERS.

Cross-interrogatories to be propounded to Mrs. Eliza Boyd, (executrix of the last will and testament of Wm. H. Boyd, deceased,) of Bowie county, Texas, and to J. B. Moss and Samuel F. Moults, of witnesses to be examined on the part of plaintiff in the above-entitled cause:

1st cross-interrogatory. If you say you sold cotton to plaintiff, or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

2d cross-interrogatory. Do you know the history of said cotton; and did the same, or any portion thereof, ever belong to the said so-
called confederate government? Was not the only ground
63 upon which said cotton could justly be held by the treasury officers, that it was, along with all the cotton in that region, captured property?

3d cross-interrogatory. If you say that plaintiff or his said agent spoke of said contract, did he not in substance represent that he had a contract with the government for the purchase of cotton which belonged to the confederate government?

4th cross-interrogatory. State any other matter or thing which will make for the benefit of the plaintiff as fully as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for Plaintiff.

United States Circuit Court, district of Louisiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
64 B. F. FLANDERS.

Interrogatories to be administered to W. B. Aiken, of , a witness to be examined on the part of B. F. Flanders, defendant in the above-entitled suit:

First. Please state your name, residence, and profession or business.

Second. Do you know either, and which of the parties, to this suit named above in the caption? When and where did you first know them?

Third. Did you, by yourself or agent, sell 386 bales of cotton to the plaintiff or to Charles E. Goodwin, at Shreveport, La., on or about the first of March last? What price was paid for the same?

Fourth. Was said cotton, or any and what portion of the same, under seizure by the agents of the Treasury Department before and at the time of said sale? Under what plea or pretence was the same seized and held, and by whom (name him) was it detained?

65 If you shall state that it was seized and held under a charge that it had been confederate cotton, and therefore was the property of the United States, please state whether the said Goodwin or the plaintiff (if he was there) knew that it was so under seizure, under the charge aforesaid.

Fifth. Do you know whether the plaintiff or said Goodwin claimed that they, or either of them, purchased the said cottons under authority of a contract with the Treasury Department to buy confederate cottons under seizure or otherwise?

Sixth. State fully what representations, if any, were made to you by the plaintiff, or by said Goodwin, on the subject of any contract or authority they had with or from the government.

Seventh. Had this cotton been free of seizure by the government officials, what was the market price or value of the same per

66 pound or per bale at Shreveport at the date of said sale?

Eighth. In what manner and to what extent was the market value or price of said cotton influenced by the fact of its being under seizure at the time of the sale? Was the price or value enhanced or diminished by the fact, and was it released to you, or to Mr. Tweed or Goodwin? Do you know of your own knowledge?

(Signed) WHITAKER & STUART,
Of Counsel for Def't.

United States Circuit Court district of Louisiana.

Cross-interrogatories.

J. P. TWEED
vs.
B. F. FLANDERS.

Cross-interrogatories to be propounded to Wm. B. Aiken, of , a witness to be examined on the part of plaintiff in the above-entitled suit.

67 1st cross-interrogatory. If you say you sold cotton to plaintiff, or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

2d cross-interrogatory. Do you know the history of said cotton, and did the same or any portion thereof belong to the so-called confederate government? Was not the only ground upon which said cotton could be justly held by the treasury officers that it was, along with all the cotton in that region, captured property?

3d cross-interrogatory. If you say that plaintiff or his said agent spoke of said contract, did he not in substance represent that he had a contract with the government for the purchase of cotton which had belonged to the confederate government.

4th cross-interrogatory. State any other matter or thing
68 which will make for the benefit of the plaintiff as fully as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Plaintiff.

Testimony taken under commission.

THE STATE OF TEXAS, *Red River County, ss*:

I, John O. Sims, a notary public in and for the county of Red River, by virtue of a commission to me directed from the United States Circuit Court, district of Louisiana, in a suit now in said court pending, wherein J. P. Tweed is plaintiff, and R. F. Flanders defendant, have caused J. L. Carroll, the witness in said commission named, to appear before me, and after being duly sworn true answer to make to the interrogatories accompanying said commission. The said witness answering thereto, says:

69 To the first direct interrogatory: My name, John L. Carroll. I reside in Red River county, Texas; my business is that of a farmer.

To the second interrogatory: I know neither of the parties to this suit.

Third interrogatory: I owned twelve bales of cotton. I am not positive as to the mark, but think it was U. C. B. H. Epperson was my agent, and sold the cotton for me, to whom I do not know. I received from my agent sixty dollars per bale in specie for the cotton.

Answer to fourth interrogatory: I know neither of the seizure and charges against the cotton except through my agent. I know it was not confederate cotton.

Answer to fifth interrogatory: I don't know of my own knowledge about the authority of the parties to buy cotton.

Answer to sixth interrogatory: The market value of the
70 cotton at Jefferson was twenty-three cents in specie per pound.

Answer to seventh interrogatory: I know that the cotton was raised by me, and there were no just grounds upon which it could be seized or detained. I know nothing more that will benefit the plaintiff.

(Signed) JOHN L. CARROLL.

To the first cross-interrogatory: I did not sell any cotton to plaintiff or Charles E. Goodwin. I do not know to whom my agent sold.

Answer to second cross-interrogatory. I know that said cotton was raised on my place in Red River county, Texas; shipped by my wagon to Jefferson; after which time I have no personal knowledge as to its history. So far as I know they had no just claim on the cotton. I don't know whether it was along with captured cotton or not.

71 Answer to 4th cross-interrogatory. I know nothing more that will benefit the plaintiff.

(Signed) JOHN L. CARROLL.

STATE OF TEXAS, *Red River County:*

I, John O. Sims, notary public in and for said county of Red river, do hereby certify that the facts stated by me as aforesaid are true, and that the foregoing answers were, by the said witness, John L. Carroll, sworn to and subscribed before me.

Given under my hand officially and seal of office, at office in said county, this 1st day of April, A. D. 1867.

[SEAL.] (Signed) JOHN O. SIMS,
Notary Public, Red River County.

STATE OF TEXAS, *Red River County:*

72 I, John O. Sims, notary public in and for the county of Red River, by virtue of a commission to me directed from the United States Circuit Court, district of Louisiana, in a suit now in said court pending, wherein J. P. Tweed is plaintiff, and B. F. Flanders defendant, have caused W. B. Aiken, the witness in said commission named, to appear before me; and after being duly sworn true answer to make to the interrogatories accompanying said commission, the said witness answering thereto says:

1st direct interrogatory. My name is W. B. Aiken; I am a farmer, and reside in Red River county, Texas.

2d direct interrogatory. I was introduced to a gentleman by the

name of Tweed, at Shreveport, Louisiana, about 1st March, 1866. I do not know the defendant, B. F. Flanders.

73 3d direct interrogatory. I did by myself and agent sell to Charles E. Goodwin, agent for Tweed, 386 bales of cotton at Shreveport; also fifteen bales which had been misplaced after seizure by the treasury agent at Jefferson, Texas. I received eighty dollars per bale in gold coin. The parties, Tweed and Goodwin, were to pay my lawyers' fees, and to take up a bond which I had given to the treasury agent at Jefferson for the payment of the internal revenue duty. The amount was three thousand eight hundred and thirty-two dollars in currency. This bond they failed to pay.

4th interrogatory. It was under seizure at the time of sale. The plea and pretences for seizure was that I had not filed my certificate as the producer of the cotton with the warehousemen at Jefferson, Texas. It was seized, held, and detained by General Burbridge. It was not confederate cotton, and if there was any change to that effect

74 it never came to my knowledge.

To the fifth direct-interrogatory. I understood from the plaintiff and Goodwin, that they had authority to buy cotton under seizure.

To the sixth direct-interrogatory. I understood from both Tweed and Goodwin that Tweed had authority from the government to buy cotton under seizure.

To the seventh direct-interrogatory. If it had not been under seizure at the time of sale, it was worth from one hundred and ten to one hundred and twenty dollars per bale at that time and place.

To the eighth direct-interrogatory. There was a loss of at least one-fourth of its value at the time of sale; the price was diminished as before stated at least one-fourth. It was not released to me, and I do not know any thing more of it.

(Signed) W. B. AIKEN.

To the first cross-interrogatory. The cotton was sold about

75 the first of March, 1866.

To the second cross-interrogatory. I do know the history of said cotton it was produced by me, except five bales, which I bought of my neighbor. Before it was seized it did not belong to the confederate government. I did not consider that treasury agent had any right to interfere with my cotton, it being my private property; nor was it along with captured cotton, nor did I consider my cotton captured property.

To the 3d cross-interrogatory. The plaintiff and his agent both represented to me that the plaintiff had a contract with the Treasury Department to buy confederate cotton or any cotton under seizure.

To the 4th cross-interrogatory. I know nothing more that will benefit the plaintiff in the above-entitled cause.

(Signed) W. B. AIKIN.

STATE OF TEXAS, *Red River county*:

76 I, John O. Sims, a notary public in and for said county, do hereby certify that the facts by me stated, as aforesaid, are true, and that the foregoing answers were by the said witness, W. B. Aikin, sworn to and subscribed before me.

Given under my hand officially, and seal of office at office in said county, this 1st day of April, A. D. 1867.

(Signed) JOHN O. SIMS,
Notary Public, Red River County.

Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

Commission for defendant issued February 25th, 1867, returned and filed May 1st 1,867, in cases No. 3,857, and No. 3,899.

77 To J. E. Ellet, notary public, or Maybray and Culbertson, attorneys at Jefferson:

Know ye that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Wright, witness, and him duly examine on the annexed interrogatories on oath, touching and concerning certain matters and things in two causes now depending in the said court, wherein John P. Tweed is plaintiff, and Benj. F. Flanders is defendant; and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said causes, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of
78 the Supreme Court of the United States, at the city of New Orleans, this 25th day of February, anno Domini, 1867, and the 91st year of the independence of the United States of America.

[SEAL.] (Signed) CHAS. CLAIBORNE. *Clerk*,
By F. B. VINOT, *D'y Clerk.*

United States Circuit Court district of Louisiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
B. F. FLANDERS.

Interrogatories to be administered to Wright, of late Wright & Harrison, of Jefferson, Texas, a witness to be examined on the part of B. F. Flanders, defendant in the above-entitled cause.

First. Please state your name, residence, and business or profession.

Second. Do you know either and which of the parties named in the caption of this suit? If you know the plaintiff, state when and
79 where you first knew him.

Third. Did you on or about the 26th of February, 1866, sell to the plaintiff, or to Charles E. Goodwin, at Jefferson, Texas, certsin 23 bales of cotton, marked R. T., and for what price? Where was the same stored or deposited at the date of the sale?

Fourth. What portion of said cotton, if any, was before, and at the time of the sale, held under seizure by any agent or agents of the Treasury Department, and by whom? Under what plea or pretense was the same so seized and held? If you shall state that it was seized and held under a charge, that it had in any way belonged or been devoted to the cause of the confederate States or their government, and was therefore the property of the United States, please state if you know whether said Goodwin or the plaintiff (if he
80 was there) knew that it was so under seizure under the charge aforesaid.

Fifth. Do you know whether the plaintiff or said Goodwin claimed or represented that they, or either of them, purchased said cotton under authority of a contract with the Treasury Department of the United States to buy confederate cotton under seizure or otherwise? or state fully what representations were made to you by either Goodwin or the plaintiff on the subject of their authority to purchase confederate cottons or such as were claimed to be.

Sixth. What was the market value at Jefferson, Texas, at the date of the sale of the said cotton? If it had been free of any charge or seizure as aforesaid. Was the price at which you sold, influenced in any degree by the embarrasments resulting from said charge and seizure? How was it influenced? and to what extent?

Seventh. Can you state any other matter or fact within
81 your knowledge, which may be of benefit or advantage to the defendant in this suit? If so, please to state the same as fully as if you were here specially interrogated thereunto.

("Signed") WHITTAKER & STUART,
Of counsel for Defendant.

United States Circuit Court, District of Louisiana.

Cross-interrogatories.

J. P. TWEED
vs.
B. F. FLANDERS.

Cross-interrogatories to be propounded to Wright, of Jefferson, Texas, a witness to be examined on the part of plaintiff in the above-entitled cause.

1st cross-interrogatory. If you say you sold cotton to plaintiff or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

2d cross-interrogatory. Do you know the history of said cot-
82 ton, and did the same or any portion thereof ever belong to the so-called confederate government? Was not the only ground upon which said cotton could be justly held by the Treasury officers that it was along with all the cotton in that region captured property?

3d cross-interrogatory. If you say that plaintiff or his said agent spoke of said contract, did he not in substance represent that he had a contract with the government for the purchase of cotton which had belonged to the confederate government?

4th cross-interrogatory. State any other matter or thing which will make for the benefit of the plaintiff as fully as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Plaintiff.

83 *Testimony taken under commission.*

THE STATE OF TEXAS, *County of Marion*:

I, D. B. Culbertson, by virtue of a commission to me directed from the Circuit Court of the United States for the fifth judicial circuit holding sessions in and for the district of Louisiana in a suit now in said court pending, wherein John P. Tweed is plaintiff, and Benjamin F. Flanders is defendant, have caused the witness, A. W. Wright, named in said commission, to appear before me, and after being duly sworn true answers to make to the interrogatories accompanying said commission, the said witness answering thereto, says:

To the 1st interrogatory he answers: That his name is A. W. Wright; he resides in Jefferson, and is a commission merchant.

To the 2d interrogatory he answers: He does not know
84 either of the parties to this suit

To the 3d interrogatory he answers: That W. H. Harrison, of the firm of Wright, Harrison & Co., of which firm witness was a member, sold to Charles E. Goodwin 23 bales of cotton marked R. T., at the price of 75 dollars per bale, in coin.

To the 4th interrogatory he answers: All of the said 23 bales were held under seizure by Charles Turnbull, United States Treasury agent, so-called, before and at the time of the said sale. The sale was made in the month of March, A. D. 1866. Goodwin knew at the time the cotton was sold to him that it was under seizure and was claimed as cotton belonging to the United States government.

To the 5th interrogatory he answers: That Goodwin represented
85 that he purchased the cotton by virtue of a contract between Tweed, the plaintiff, and the Treasury Department, by which he was authorized to purchase cotton thus held.

To the sixth interrogatory, he answers: That his best recollection is, that cotton was worth in this market 25c. per pound in specie at the date of the sale; that the price at which the cotton was sold was influenced by the embarrassments resulting from said seizure. The price was lessened about fifty dollars per bale in specie.

To seventh interrogatory he answers: That he has stated all he knows that will benefit either party.

Cross-interrogatories.

To the 1st cross-interrogatory he answers: That the cotton was sold in the month of March, 1866.

To 2d cross-interrogatory he answers: I am not acquainted with the history of the cotton. It was alleged by the Treasury officers at the time of seizure that the owner of the said cotton had subscribed or pledged 23 bales of cotton to the government of the Confederate States, and these 23 bales sold to Goodwin were taken out of the owners' crop of forty bales in store with us as the cotton so pledged.

86

To 3d cross-interrogatory he answers: He did.

To 4th cross-interrogatory he answers: He has stated all he knows of the matter.

(Signed) A. W. WRIGHT.

THE STATE OF TEXAS, *County of Marion*:

I, D. B. Culbertson, one of the commissioners in said commission named, do hereby certify that the facts by me stated as aforesaid are true, and that the foregoing answers were by the said witness, A. W. Wright, sworn to and subscribed before me.

Given under my hand this 16th day of April, 1867.

(Signed) D. B. CULBERTSON.

Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

87 *Commisson for plaintiff, issued March 15th*, 1867, *returned and filed April* 27, 1867, *in cases No.* 3857 *and* 3899.

To Nathaniel Appleton, Esq., New York, or to any United States Commissioner in New York:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Epperson, and him duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in two cases now depending in the said court, wherein John P. Tweed is plaintiff and Benjamin F. Flanders is defendant, and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said causes, and send also this writ.

88

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 15th day of March, anno Domini 1867, and the 91st year of the independence of the United States of America.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

United States Circuit Court, fifth circuit, (two actions.)

Interrogatories-in-chief.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3857.

JOHN P. TWEED
vs.
B. FLANDERS. } No. 3899.

89 Commission to issue; by consent, formalities waived.

Interrogatories to be propounded to Epperson, in the city of New York, whose answers are to be used in the trial of these causes, in behalf of plaintiff.

Interrogatory 1st. What is your age, residence and profession?

Interrogatory 2d. Do you know either of the parties to these suits? If yea, which party?

Interrogatory 3d. Do you know anything of the purchase of cotton by plaintiff, in the spring of 1866, in the Red River country? If yea, please state all you know of such purchase; who he purchased of; what amount of cotton, and for what price. State all the particulars, and fully.

90 Interrogatory 4th. Do you know of any other matter or thing which, if stated, would be of value to plaintiff? If yea, state the same as fully as if specially interrogated thereon.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Plaintiff.

Cross-interrogatories.

Cross-interrogatory 1st. on the part of Flanders. If you shall state in answer to any of the foregoing interrogatories that you acted as the counsel or attorney of W. B. Aitkin, or any other person or persons, in the sale of their cotton to the plaintiff or his agent, Charles E. Goodwin, please state particularly with what object you were employed as attorney by said Aitkin or other person; was his or their cotton under seizure by the agents of the Treasury Department, and were you employed with the object of effecting a release of

91 such seizure. Did you succeed in effecting the release? Was the cotton in any, and if in any, in what case, formally released by the agent or sub-agents of the Treasury Department before you or the party owning it had agreed to, or made a bargain for its sale to the plaintiff, Tweed, or his agent?

Cross-interrogatory 2d. Do you not know that Aitkin's cotton, and the other cottons belonging to citizens, whose attorney you were, were persistently held under seizure by the agents of the Treasury Department, with the object of so harrassing them and intimidating them as to coerce them to sell their cottons to Goodwin, as Tweed's agent, at a less price than they were worth; and do you not know that this was done collusively with said Goodwin?

Cross-interrogatory 3d. Do you not know that Tweed or his
92 agent bought Aitkin's or other cottons from owners for whom you were attorney, under the representation that he had a contract with the Treasury Department which authorized him to purchase cotton kown or seized as confederate cotton, and that hence they sold to him when they could not, by themselves or their attorneys, get their cottons released from seizure, although there was no real ground for such seizure and detention?

Cross-interrogatory 4th. Do you not know or did you not understand that Tweed or his agent, Goodwin, had some understanding and arrangement with General Burbridge and Col. Turnbull, agents of Treasury Department, by which they were to forward his views, facilitate unlawfully his ends, and share in his profits of all such cottons as they held under seizure which he might conclude
93 purchases of from the owners; and did you not, in view of your convictions of the truth of such rumors and impressions, advise your client, Aitkin, and others, that they had better sell to Goodwin at less than the market value of their cottons? Did you not also so advise William H. Gill of Red River county, who had a very large amount of cotton also under unlawful seizure; and do you not know that Burbridge and Turnbull, colluding with Goodwin in their own and the interest of said Tweed, endeavored to coerce (by the means before referred to) the said Gill to sell his cottons under similar seizure to said Tweed?

Cross-interrogatory 6th. Have you ever seen the telegraphic dispatch hereto annexed, and marked in red ink, "A," signed by J. P. Tweed? Did you see or know of the dispatch, marked in red ink, "B," dated 2d March, 1866, "C. E. G"; and do you know that the same dispatch was sent by Charles E. Goodwin to Col.
94 Turnbull; and was the purchase from Aitkin and Mrs. Boyd made on that date or before, and when?

Cross-interrogatory 7th. Did you see or know of the dispatch being transmitted from said Goodwin, copy hereto annexed, marked "C," dated 8th March, 1866, and signed "Goodwin and Porter"; and was the same written and sent by Charles E. Goodwin, agent of the plaintiff?

Cross-interrogatory 8th. Did you see or know of the dispatch being transmitted from said Goodwin to said Col. Turnbull, copy hereto annexed and marked "D," dated 9th of March, 1866, signed "G. & B."; and were said initials intended to stand for Goodwin & Burbridge; and was the same written and sent by said Charles E. Goodwin, the agent of the plaintiff?

Cross-interrogatory 9th. Did you ever see a letter written by S. G. Burbridge, and addressed to Col. Charles J. Turnbull, dated at
95 Shreveport, March 3d, 1866, of which the annexed exhibit, "E," is a copy; was the same borne by said Goodwin to said Turnbull; and was the same in the handwriting of said Burbridge, exhibited by said Goodwin to you?

Cross-interrogatory 10th. Were you, before you concluded the sale of your client's cotton to said plaintiff, made aware of the relations

subsisting between the plaintiff, his agent, and the said Burbridge and Turnbull, agents of the Treasury Department, evinced by said telegrams and said letter of Burbridge?

Cross-interrogatory 11th. Do you know the fact that J. W. Brodwell, now of New Orleans, offered Mr. W. B. Aitkin thirty-five cents a pound for his cotton, which was under seizure as aforesaid, if he could get it released from the hands of the Treasury agents, and that he failed to get that price solely because he could not effect its release?

96 Cross-interrogatory 12th. Finally, did you not advise your client to sell at the price they did sell to the plaintiff, and greatly under the market price of the cotton, had the same been free from seizure, for the sole reason that you thought and told them they would save money by it; that the expenses, harassment and difficulties which would be interposed by said Treasuary agents would cost them more than the difference; that Tweed was authorized to purchase under his contract with the government all government cotton, and such as were under seizure, as such, and could safely pay he money without risk; and did not said plaintiff or his agent represent to you that by their contract they were compelled to pay one-quarter of the cotton, or its value, to the United States, and 97 therefore could not pay the full market value of the cotton; and did you not so represent to Mr. Atkin and your other clients that fact, as stated by you?

(Signed) WHITAKER & STUART,
Of Counsel for Flanders.

Exhibits A, B, C and D, and E, annexed to foregoing cross-interrogatories:

Exhibit A.

SHREVEPORT, *February 20th*, 1866.

To Mr. Cha's E. Goodwin, Jefferson, Texas:

Buy Gill's, or any other cotton in Turnbull's hands of owners at thirty per bale, subject to Turnbull's claim.

J. P. TWEED.

Exhibit B.

MARCH 2D, 1866.

By telegraph from Shreveport, 2nd, 1866:

To Col. Turnbull:

98 Have closed with Aiken and Boyce. Will be up soon. All O. K.

C. E. G.

13 w., p'd, 90

Exhibit C.

MARCH 8TH, 1866.

By telegraph from Shreveport, 8th, 1866:

To Col. C. J. Turnbull:

Steamboat Era left last evening for Moore's landing for Gill cotton, with funds to pay charges.

GOODWIN & PORTER.

16 w., p'd, 1 05.

Exhibit D.

MARCH 10TH, 1866.

By telegraph from Shreveport, 9th, 1866:

To Col. Turnbull:

Hold out for seventy-five thousand (75,000) on the G. cotton. We do our best for you.

G. & B.

16 w., p'd, 1 05.

Exhibit E.

(Copy.)

99 SHREVEPORT, *Mar. 3d*, 1866.

Col. Charles J. Turnbull:

DEAR COL: I regret not being able to come up to see you with Charlie Goodwin to-morrow. As I can't come I write by him. Old Gill stopped at this place ten days, and after seeing some meddlesome parties backed out from his proposition to sell his cotton to Goodwin. I notified him that as he was about to leave for New Orleans, that I notified him to present his affidavits, as his cotton would soon all arrive, and I should then adjudicate his case. He left at noon today without leaving any papers. I wrote to the Col. not to give him any encouragement, and to send him back for me to adjudicate his case. I am pretty sure he will sell on his return, and I will see that the arrangement made by Goodwin shall be carried out.

100 If Gill will not sell, I will then hold him so as to give you a chance to make the best terms you can with him. Goodwin will not interfere if he fails to purchase. Do all you can to aid him in buying all the cotton he can. I am satisfied that G. will carry out any agreement he may make with you. Send forward the Gill cotton as fast as you can. Also the evidence you may have in his case, as well as all others under seizure by you. I should suggest to you to get as much of the cotton out of the Indian territory as you can, as I learn that the Secretary of War has given a party a contract to

get out all government property. What is done must be done as soon as possible. Will write to you again soon.

Yours truly,

(Signed) S. G. BURBRIDGE.

United States Circuit Court, district of Louisiana.

Interrogatories-in-chief.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

Re-direct questions to be propounded to Charles E. Goodwin, a witness to be examined on behalf of plaintiff:

Were you aware that a dispatch was received by S. G. Burbridge on or about the 8th day of March, 1866, with reference to the revocation of contract for the purchase of cottons? If yea, had the plaintiff any information that his contract was annulled before said dispatch? If yea, state when and how, and from whom plaintiff received such information, and in substance what the same was. If you say that plaintiff had such prior information, state how the time of the purchase of said 495 bales compared with the time of
102 plaintiff receiving said information.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for Plaintiff.

Cross-interrogatories to be administered to the said Charles Goodwin on the part of defendant:

1st. Where was the plaintiff on the eighth day of March, 1866? Was he anywhere in the Red River country during that month? Where was he when you made the purchase of the Aitkin and other cottons bought in the month of March, 1866?

2d. If O. H. Burbridge did not receive information of the revocation of the contracts of Tweed and Turnbull himself, before the 8th of March, please state whether you know, of your own knowledge, of any way in which the plaintiff received information of it at any earlier date. Had you, as the agent of the plaintiff in the purchase of cottons under his contracts, at any time a contract, agreement or understanding, written or verbal, to pay and allow Cha's J.
103 Turnbull twenty-five dollars per bale, or fifteen dollars, or any other and what sum per bale for all such cottons as you were enabled to purchase? And did you not purchase the Aitkin cotton under such an agreement; and did you not attempt the purchase of

the Gill cotton, then under seizure, and other cottons, under the same agreement or understanding?

3d. Did you not promise Gen'l S. G. Burbridge that you would pay Turnbull the sum of twenty-five or fifteen dollars per bale, as before inquired of, for all such purchases?

4th. After you came down from the Red River, and the cottons you had bought were received at New Orleans, did not some controversy arise betweeu yourself or the plaintiff and Col. Turnbull, or some of his friends acting for him, as to the sums you were to pay as aforesaid, he or they, on his behalf, claiming twenty-five dollars per bale and you insisting the agreement was but for fifteen?

104 5th. Did you know, on the 2d of March, 1866, the date of your purchase of the Aitkin cotton, that the Tweed contract or the Turnbull contract, as they were called, had been revoked by the Secretary of the Treasury?

(Signed) D. STUART & WHITAKER,
Of Counsel for Def't.

It is stipulated that the following cross-interrogatories shall be propounded to Charles E. Goodwin, whose deposition was heretofore taken without cross-examination on the part of the plaintiff, and that the same may be used on the trial of the causes of Tweed *vs.* Flanders in the Circuit Court of the United States for Louisiana, to be taken under the commission issued for the examination of Epperson, in New York.

(Signed) SULLIVAN, BILLINGS & HUGHES,
For Pl'ff.

(Signed) STUART & WHITAKER,
For Def't.

105 First cross-interrogatory. Please examine the exhibits annexed to the cross-interrogatories (foregoing) propounded to Epperson, esq., and marked, respectively, A, B, C, D, and E, and state whether you received from the plaintiff the dispatch marked "A"? Did you transmit by telegraph the dispatches marked B and C? Did you transmit a dispatch of which the copy "D" is a true copy? Does the G, in the body of said dispatch, refer W. H. Gill? Does the signature to said dispatch, "G. and B.," indicate Goodwin & Burbridge? If not, what names do said initials indicate?

Second cross-interrogatory. Did you bear from Stephen G. Burbridge to Col. Turnbull the letter, a copy of which is marked "E," (annexed as above,) and were you cognizant of the contents of said letter?

Third cross-interrogatory. Had you any, and if any bargain, agreement, or understanding with either Stephens, G. Burbridge,
106 or C. J. Turnbull, or both of them, that either of them should have any share or interest in the profits of such cottons as you were enabled to purchase, which were under seizure by the agents of the Treasury Department, or any of them? If so, what

was such agreement or understanding? Or if you shall say that you had no such understanding with them, or either of them, state whether you made or had any such agreement or understanding with any person or persons representing or claiming to represent either of them. Did you advance any moneys to or for Burbridge or Turnbull for the ostensible purpose of paying charges on any cottons under seizure, (other than such cottons as you made purchase of,) and if so, how much, at what dates, and upon what cottons? Have you or the plaintiff, to your knowledge, ever recovered back such
107 advances? If so, from whom was the money received; when was it repaid?

Fourth cross-interrogatory. In the statement of your accounts of payments and disbursements rendered to the plaintiff of your operations as his agent, in Red River, during the period you so acted, in the purchase of the cotton in controversy, did you return any charge for money advanced, loaned, or paid to S. G. Burbridge or C. J. Turnbull, or to any person for them, or either of them, and which had not at the time of the rendition of your account been repaid? If so, how much, or to whom was such money paid or advanced?

(Signed) WHITAKER & STUART,
Of Counsel for Flanders.

Plaintiff, reserving all legal objections to the foregoing, declines to cross the same.

(Signed) SULLIVAN, BILLINGS & HUGHES,
For Plaintiff.

108 *Testimony taken under commission.*

Deposition of a witness, produced, sworn, and examined by virtue of the annexed commission, on the twenty-seventh day of March, one thousand eight hundred and sixty-seven, at the city of New York, in the county and State of New York, before me, Nathaniel Appleton, a commissioner named in said commission, in two certain causes now depending in the Circuit Court of the United States for the fifth judicial circuit, district of Louisiana, between John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, on the part of the said plaintiff.

Benjamin H. Epperson, being produced and sworn, answers as follows to the interrogatories propounded in these causes:

1st. To the fist interrogatory he saith: My age is 42 years; residence, Clarksville, Texas; my profession, lawyer.

109 2d. To the 2d interrogatory he saith: I am acquainted with the plaintiff only.

3d. To the third interrogatory he saith: I do know of plaintiff purchasing from four hundred to five hundred bales of cotton in the Red River country in the spring of 1866. On or about the third day of March, 1866, one lot of this cotton, consisting of about four hundred and five bales, belonging to Wm. B. Aikin, who resides near me in Red River county, Texas, I sold, as his attorney, to the

plaintiff, through Charles E. Goodwin, acting for the plaintiff in this transaction, for which I received eighty dollars in gold per bale, and five thousand dollars in currency as charges for my fees as attorney for Aikin. The plaintiff also assumed to pay, and did pay, all the charges which had accrued upon said cotton for storage on the same at Jefferson, Texas, and transportation to and charges at
110 Shreveport, La. This cotton was sold according to warehouse receipts at Jefferson, Texas, and not according to actual count of bales, of which fifteen bales had, at and prior to that time, been stolen, for which the plaintiff paid the same price. A few days thereafter I sold to the plaintiff in like manner, for sixty dollars per bale in gold, ten other bales of cotton belonging to John L. Carroll, also of Red River county, Texas, which had been forcibly seized and shipped by U. S. Treasury agents from said Jefferson, which was also sold according to warehouse receipts at Jefferson, and not by actual count. I also know that the plaintiff in like manner bought of Mrs. Mary L. Boyce, of Red River county, Texas, about forty bales cotton, for which he paid eighty-five dollars per bale in gold; also that he purchased of Mrs. Boyd, of Bowie county, Texas, about thirty-two bales of cotton. I have no per-
111 sonal knowledge of what he paid for this last-mentioned lot. All of the aforementioned cotton had been previouly seized by one C. J. Turnbull, at Jefferson, U. S. Treasury agent, or claiming to be so, and his subordinates, under the pretext that it was cotton belonging to the United States.

4th. To the fourth interrogatory he saith: I know of no other matter or thing, which if stated, would be of advantage to the plaintiff in these actions.

First. To the first cross-interrogatory he saith: I was employed as the attorney for W. B. Aikin and John L. Carroll, for the purpose of procuring the release of their cotton from seizure. I failed to secure its release. The said cotton was not formally released, or in any manner released, by the agent or sub-agents of the Treasury Department, before myself or the parties owning the same had
112 agreed to or made a bargain for its sale to the plaintiff or the plaintiff's agent.

Second. To the second cross-interrogatory he saith: I do not know that it was held for the purpose of enabling Goodwin to buy it; I do not think it was. I did not think he was the party favored by those who seized it, because they always seemed greatly annoyed by his purchasing any under seizure, and because he was willing to give more liberal prices than others who were attempting to buy at mere nominal prices. I cannot know, positively, what were the motives which actuated the agents in seizing the cotton alluded to. But from the circumstances, I believe it was done to swindle the owners out of it for the benefit of these agents; and the persistently holding on to it and refusing to release, however clearly it might be shown to be unjustly held, was one of the schemes devised to force the
113 owners to sacrifice it at a mere nominal price; and I also believe that there was collusion between the agents and cotton pur-

chasers, of whom there were a large number at Jefferson and Shreveport. But I do not think there was any such collusion with Mr. Goodwin, because the seizure of the largest lots had been made before he came to Jefferson, and, as before stated, he gave better prices, and seemed to so disconcert the agents and other purchasers.

Third. To the third cross-interrogatory he saith: It was represented to me that Mr. Tweed had some arrangement with the Treasury Department by which he was authorized to purchase cotton, but what that was I do not know; but whatever it may have been it was not made a basis for these sales, or a reason for them.

Fourth. To the fourth cross-interrogatory he saith: I do
114 not know of any arrangement of the character referred to in the fouth cross-interrogatory. I did advise the sale of the cotton at the prices at which it was sold; not, however, because I knew of any such an arrangement as that alluded to, but because I was satisfied that Turnbull and Burbridge would not release to them the cotton, and that the price offered for it by Mr. Tweed was more than could be realized for it by the then owners, in view of the manipulations it was daily undergoing. I did not advise a sale to Goodwin particularly, only so far as he was willing to give more than any other person. I did advise Mr. Gill to sell his cotton to Goodwin at the price he offered, because I thought it more than he could ever realise for it otherwise. I do not know of any other collusion between the parties mentioned, in the latter part of said fourth cross-interrogatory, in relation to the Gill cotton.

115 Sixth. To the sixth cross-interrogatory he saith: I have never before seen the telegraph dispatch hereto annexed, and marked in red ink "A." I have not seen before the dispatch marked in red ink "B," and know nothing in relation to it. I have herein before stated, as near as I am able, the date of the purchase from Aiken and Mrs. Boyce.

Seventh. To the seventh cross-interrogatory he saith: I know nothing whatever in relation to the dispatch annexed, and marked "C."

Eighth. To the eighth cross-interrogatory he saith: I know nothing whatever in relation to the dispatch annexed, and marked "D."

Ninth. To the ninth cross-interrogatory he saith: I know nothing whatever in relation to the letter referred to in the ninth cross-interrogatory, and of which what purports to be a copy, and marked "E," is annexed.

Tenth. To the tenth cross-interrogatory he saith: I know
116 of no such relations existing as referred to in the ninth cross-interrogatory, either before or since the sale.

Eleventh. To the eleventh cross-interrogatory he saith: I do not know of any such offer by Mr. Brodwell to Mr. Aiken, as referred to in the eleventh cross-interrogatory.

Twelfth. To the twelfth cross-interrogatory he saith: I did advise the sale of the cotton at the prices at which it was sold, because I believed that more would thus be realized from it than could other-

plaintiff, through Charles E. Goodwin, acting for the plaintiff in this transaction, for which I received eighty dollars in gold per bale, and five thousand dollars in currency as charges for my fees as attorney for Aikin. The plaintiff also assumed to pay, and did pay, all the charges which had accrued upon said cotton for storage on the same at Jefferson, Texas, and transportation to and charges at
110 Shreveport, La. This cotton was sold according to warehouse receipts at Jefferson, Texas, and not according to actual count of bales, of which fifteen bales had, at and prior to that time, been stolen, for which the plaintiff paid the same price. A few days thereafter I sold to the plaintiff in like manner, for sixty dollars per bale in gold, ten other bales of cotton belonging to John L. Carroll, also of Red River county, Texas, which had been forcibly seized and shipped by U. S. Treasury agents from said Jefferson, which was also sold according to warehouse receipts at Jefferson, and not by actual count. I also know that the plaintiff in like manner bought of Mrs. Mary L. Boyce, of Red River county, Texas, about forty bales cotton, for which he paid eighty-five dollars per bale in gold; also that he purchased of Mrs. Boyd, of Bowie county, Texas, about thirty-two bales of cotton. I have no per-
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112 agreed to or made a bargain for its sale to the plaintiff or the plaintiff's agent.

Second. To the second cross-interrogatory he saith: I do not know that it was held for the purpose of enabling Goodwin to buy it; I do not think it was. I did not think he was the party favored by those who seized it, because they always seemed greatly annoyed by his purchasing any under seizure, and because he was willing to give more liberal prices than others who were attempting to buy at mere nominal prices. I cannot know, positively, what were the motives which actuated the agents in seizing the cotton alluded to. But from the circumstances, I believe it was done to swindle the owners out of it for the benefit of these agents; and the persistently holding on to it and refusing to release, however clearly it might be shown to be unjustly held, was one of the schemes devised to force the
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chasers, of whom there were a large number at Jefferson and Shreveport. But I do not think there was any such collusion with Mr. Goodwin, because the seizure of the largest lots had been made before he came to Jefferson, and, as before stated, he gave better prices, and seemed to so disconcert the agents and other purchasers.

Third. To the third cross-interrogatory he saith: It was represented to me that Mr. Tweed had some arrangement with the Treasury Department by which he was authorized to purchase cotton, but what that was I do not know; but whatever it may have been it was not made a basis for these sales, or a reason for them.

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Seventh. To the seventh cross-interrogatory he saith: I know nothing whatever in relation to the dispatch annexed, and marked "C."

Eighth. To the eighth cross-interrogatory he saith: I know nothing whatever in relation to the dispatch annexed, and marked "D."

Ninth. To the ninth cross-interrogatory he saith: I know nothing whatever in relation to the letter referred to in the ninth cross-interrogatory, and of which what purports to be a copy, and marked "E," is annexed.

Tenth. To the tenth cross-interrogatory he saith: I know
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Eleventh. To the eleventh cross-interrogatory he saith: I do not know of any such offer by Mr. Brodwell to Mr. Aiken, as referred to in the eleventh cross-interrogatory.

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plaintiff, through Charles E. Goodwin, acting for the plaintiff in this transaction, for which I received eighty dollars in gold per bale, and five thousand dollars in currency as charges for my fees as attorney for Aikin. The plaintiff also assumed to pay, and did pay, all the charges which had accrued upon said cotton for storage on the same at Jefferson, Texas, and transportation to and charges at
110 Shreveport, La. This cotton was sold according to warehouse receipts at Jefferson, Texas, and not according to actual count of bales, of which fifteen bales had, at and prior to that time, been stolen, for which the plaintiff paid the same price. A few days thereafter I sold to the plaintiff in like manner, for sixty dollars per bale in gold, ten other bales of cotton belonging to John L. Carroll, also of Red River county, Texas, which had been forcibly seized and shipped by U. S. Treasury agents from said Jefferson, which was also sold according to warehouse receipts at Jefferson, and not by actual count. I also know that the plaintiff in like manner bought of Mrs. Mary L. Boyce, of Red River county, Texas, about forty bales cotton, for which he paid eighty-five dollars per bale in gold; also that he purchased of Mrs. Boyd, of Bowie county, Texas, about thirty-two bales of cotton. I have no per-
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First. To the first cross-interrogatory he saith: I was employed as the attorney for W. B. Aikin and John L. Carroll, for the purpose of procuring the release of their cotton from seizure. I failed to secure its release. The said cotton was not formally released, or in any manner released, by the agent or sub-agents of the Treasury Department, before myself or the parties owning the same had
112 agreed to or made a bargain for its sale to the plaintiff or the plaintiff's agent.

Second. To the second cross-interrogatory he saith: I do not know that it was held for the purpose of enabling Goodwin to buy it; I do not think it was. I did not think he was the party favored by those who seized it, because they always seemed greatly annoyed by his purchasing any under seizure, and because he was willing to give more liberal prices than others who were attempting to buy at mere nominal prices. I cannot know, positively, what were the motives which actuated the agents in seizing the cotton alluded to. But from the circumstances, I believe it was done to swindle the owners out of it for the benefit of these agents; and the persistently holding on to it and refusing to release, however clearly it might be shown to be unjustly held, was one of the schemes devised to force the
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chasers, of whom there were a large number at Jefferson and Shreveport. But I do not think there was any such collusion with Mr. Goodwin, because the seizure of the largest lots had been made before he came to Jefferson, and, as before stated, he gave better prices, and seemed to so disconcert the agents and other purchasers.

Third. To the third cross-interrogatory he saith: It was represented to me that Mr. Tweed had some arrangement with the Treasury Department by which he was authorized to purchase cotton, but what that was I do not know; but whatever it may have been it was not made a basis for these sales, or a reason for them.

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Ninth. To the ninth cross-interrogatory he saith: I know nothing whatever in relation to the letter referred to in the ninth cross-interrogatory, and of which what purports to be a copy, and marked "E," is annexed.

Tenth. To the tenth cross-interrogatory he saith: I know
116 of no such relations existing as referred to in the ninth cross-interrogatory, either before or since the sale.

Eleventh. To the eleventh cross-interrogatory he saith: I do not know of any such offer by Mr. Brodwell to Mr. Aiken, as referred to in the eleventh cross-interrogatory.

Twelfth. To the twelfth cross-interrogatory he saith: I did advise the sale of the cotton at the prices at which it was sold, because I believed that more would thus be realized from it than could other-

wise, and I did give this advice because of harassment and difficulties which I believed the Treasury agents would interpose, and that the risk and difficulties to be overcome in getting their cotton released were greater than the difference in the price offered, and that which could be obtained if it were released; but I did not give this advice because Tweed had any such contract as alluded to in the twelfth cross-interrogatory. His alleged contract had no
117 influence with me in advising the sale to him, but I advised it to him because he offered more than any other one. He never represented to me that, under any circumstances, he was compelled to pay one-fourth of the cotton the United States, but upon the contrary, I understood from him that, if the cotton did in fact prove not to be liable to seizure, he would not have to pay any of it to the government. I did not care anything for the terms of the alleged contract. The same representations were made to Mr. Aiken in regard to the whole transaction that were to me, as he was present and assisting in the negotiations himself, and signed the contract in person.

(Signed) B. H. EPPERSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 27th day of March, 1867, before me.

(Signed) NATH'L APPLETON, *Commissioner.*

118 Examination adjourned to April 22d, 1867.

(Signed) NATH'L APPLETON, *Commissioner.*

APRIL 22*d*, 1867.

Examination resumed:

Charles E. Goodwin, a witness whose deposition is taken by consent under the annexed commission, being produced and sworn, on this the 22d day of April, in the year of our Lord one thousand eight hundred and sixty-seven, answers as follows to the interrogatories propounded in these cases:

First. To the first interrogatory he saith: I was aware that a dispatch was received by S. G. Burbridge on or about the 8th day of March, 1866, in reference to the revocation of contract for the purchase of cottons. I refer to Mr. Tweed's contract. Mr. Tweed had information prior to that, that his contract was or would be annulled.

On or about the 28th day of February, 1866, Mr. Tweed
119 stated to me that he had received from W. P. Mellen and from Messrs. Burbridge the information that said contract had been or would be annulled. I do not know how this information was communicated to him by said Mellen and the Mess. Burbridge; that is, through what channel they communicated this information. The said information was communicated to me on or about the 28th day of February, 1866, which was some four or five days prior to the purchase of said 495 bales of cotton.

First. To the first of the cross-interrogatories he saith: The plaintiff was, to the best of my recollection, at Shreveport, La., on

the 8th day of March, 1866. He was in the Red River country during the month of March, 1866. The plaintiff was at Shreveport when I made the purchase of the Aiken and other cottons in March, 1866.

Second. To the second cross-interrogatory he saith: Gen-
120 eral S. G. Burbridge, and the plaintiff, Mr. Tweed, both informed me, prior to the purchase of the 495 bales of cotton, that the contract held by Mr. Tweed had been or would be annulled. I do not know when O. H. Burbridge received information of the revocation of said contract. I only know of the source of the knowledge of the plaintiff in the matter, than as I have before stated. I understood from S. G. Burbridge that all contracts for the purchase of cotton in that district was or would be annulled. I never have, as the agent of plaintiff, any agreement or contract with Charles J. Turnbull to allow him any sum per bale for any cottons purchased under Mr. Tweed's contract, and which Mr. Turnbull held under seizure at the time of purchase. The Aikens cotton was
121 not purchased under any such agreement. Mr. C. J. Turnbull did make overtures to me to allow him a consideration per bale on the purchase of the Gill cotton in case it was made. The Gill cotton, however, was not purchased by me. No cotton was purchased by me as the agent of Mr. Tweed, or otherwise, under any such agreement as referred to. I took into consideration the proposition of Mr. Turnbull's, and attempted the purchase of Gill's cotton only; but as I have before stated, I did not purchase it.

Third. To the third cross-interrogatory he saith: I never promised General S. G. Burbridge that I would pay Mr. Turnbull the sum of twenty-five or fifteen dollars, or any other sum per bale on any cotton purchased.

Fourth. To the fourth cross-interrogatory he saith: I never had any controversy at any time with Col. Turnbull, or any of his friends acting for him, or with any other party in relation to any allow-
122 ance per bale on cottons purchased, nor do I know of Mr. Tweed having any conversation or controversy with any one upon said subject.

Fifth. To the fifth cross-interrogatory he saith: I did know through General Burbridge and the plaintiff, prior to March 1st, 1866, that the Tweed and Turnbull contracts was or would be annulled, Gen. Burbridge stating that the official notice of such revocation was hourly expected.

First. To the first of the 2d series of cross-interrogatories he saith: I did receive from the plaintiff a dispatch of which exhibit "A" is a copy. I did transmit a dispatch by telegraph of which exhibit "B" is a copy. I know nothing of the dispatch marked exhibit "C." I know nothing of the dispatch of which exhibit "D" purports to be a copy, nor what the "G" therein refers to. I do not know what the signature G. and B. indicates.

Second. To the second of said cross-interrogatories he
123 saith: I did bear a letter from Stephen G. Burbridge to Col. Turnbull which was under seal, and I never knew the contents thereof, nor whether exhibit "E" is a copy.

Third. To the third of said cross-interrogatories he saith: I never had any bargain, agreement, or understanding with either Turnbull or S. G. B. Burbridge, or both of them, to share under any circumstances in any of the profits of any cotton I might purchase, nor with any person or persons claiming to represent them or either of them. I never advanced any moneys to or for Burbridge or Turnbull, for the ostensible purpose of paying charges upon cotton which I did not purchase, whether under seizure or not.

Fourth. To the fourth of said cross-interrogatories he saith: I did not in the statement of my accounts of payments and disbursements rendered to the plaintiff of my operations as his agent in the Red River country, during the time I was purchasing the cotton in
124 controversy, return any charge for money advanced, loaned, or paid to S. G. Burbridge or C. J. Turnbull, or to any person for them, or either of them, and which had not at the time of the rendition of my accounts been repaid. I did at one time loan Gen'l S. G. Burbridge, at Jefferson, Texas, four thousand dollars, as near as I can recollect, for which I took draft drawn on himself by C. J. Turnbull, by directions of General Burbridge, and which was by General Burbridge at that time accepted, and subsequently paid to me by Gen'l Burbridge at Shreveport.

(Signed) CHAS. E. GOODWIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 22d day of April, 1867, before me.

[SEAL.] (Signed) NATH'L APPLETON,
Commissioner,

I, Nath'l Appleton, commissioner, do hereby certify that
125 Benjamin H. Epperson and Charles E. Goodwin, the deponents, were by me severally sworn to declare the truth on the questions put to them in these cases; that the interrogatories and cross-interrogatories were produced to them and their answers thereto taken in writing and subscribed by them respectively in my presence, on the days and at the place in that behalf first aforesaid.

[SEAL.] (Signed) NATH'L APPLETON,
Commissioner.

I certify that my fees as commissioner in these cases are fifty dollars.

[SEAL.] (Signed) NATH'L APPLETON,
Commissioner.

Order.—Cause continued.

Extract from minutes of Thursday, May 30th, 1867:

JNO. P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

By written consent of counsel this cause is continued till
126 Friday, 14th June next, at 11 a. m.

Order.—Cause continued.

Extract from the minutes of Friday, June 14th, 1867:

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

By consent of counsel this cause fixed for this day is continued indefinitely.

United States Circuit Court for the fifth judicial circuit and district of Louisiana.

Petition and affidavit for commission.—Filed September 13th, 1867.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3899.

The petition of John P. Tweed, plaintiff in suit above named, respectfully represents that Oscar H. Burbridge, who resides
127 out of the jurisdiction of this court, to wit, in the State of Ohio, is a material and important witness in the prosecution of plaintiff's suit; that he herewith files the necessary affidavit and written interrogatories propounded to said witness.

Wherefore, plaintiff prays that a copy of said interrogatories be served upon said defendant, that he may propound cross-interrogatories to said witness, and that after legal delay a commission issue addressed to any U. S. commissioner or commissioner of the State of Louisiana, residing in Cincinnati, Ohio, to take the testimony of said Oscar H. Burbridge upon said interrogatories thereto annexed.

(Signed) SULLIVAN BILLINGS & HUGHES,
Att'ys for Pl'ff.

Affidavit.

STATE OF LOUISIANA, *Parish of Orleans, ss:*

James F. Latham, being duly sworn, says, that he is the
128 duly-authorized agent of J. P. Tweed, the plaintiff above mentioned in the above-named suit now pending in the U. S. Circuit Court for the fifth judicial circuit and district of Louisiana, of J. P. Tweed *vs.* B. F. Flanders; that Oscar H. Burbridge, witness interrogated above, resides out of the State of Louisiana, and that the testimony of said Oscar H. Burbridge, witness, sought to be obtained in answer to the above interrogatories, is material.

(Signed) JAS. F. LATHAM.

Sworn and subscribed before me this 13th day of September, A. D. 1867.

(Signed) D. URBAN, *U. S. Comm'r.*

United States Circuit Court for the fifth judicial circuit, holding its sessions in the district of Louisiana.

Interrogatories.—Filed September 13th, 1867.

JOHN P. TWEED
129 B.F. FLANDERS. } No. 3899.

Interrogatories to be propounded to Oscar H. Burbridge, a witness to be produced, sworn and examined on behalf of the plaintiff.

1st. What is your name, age, residence and occupation?

2d. Do you know the parties to this suit, or either of them? If yea, which of them, and how long have you known him or them?

3d. In the month of February, A. D. 1866, did you hold any office under the government of the United States? If yea, what office, and how long did you continue to hold said office?

4th. Did you, on behalf of the government of the United States, make a contract with plaintiff with reference to the purchase of cotton which had belonged to the confederate government? If yea, in what capacity? What was the date of such contract.

5th. Did you, at any time subsequent to the making of such
130 contract, visit Shreveport, and were you there consulted as to the status of cotton belonging to W. P. Aiken, Mrs. Boyd and Mrs. Boyce? If yea, when and by whom? If by plaintiff, or any one who represented him, state what information you gave such party about the status of said cotton.

6th. Did plaintiff consign to you 495 bales of cotton? If yea, state when, and whether such consignment was accompanied by any instructions from plaintiff. If such instructions were in writing, and within your possession, please annex the same to your deposition. If you say such instructions were in writing, but not in your possession, state where the same are. If you say they are lost, or in possession of defendant, then state fully and in detail what such instructions were. If plaintiff gave any reason therein for consigning the cotton to you, state the same, and state whether he informed you as to whether the cotton was or was not purchased under his
131 contract, and fully what he said on that point.

7th. Did you come to any decision with reference to said cotton? If yea, state what such decision was, when made, and whether communicated by you to plaintiff. If so, when? If your decision was not acted on, state the reason. If you say that defendant declined to carry out your decision, state whether you did not see him with reference to the cotton.

8th. If you say that 495 bales of cotton were consigned to you by plaintiff, state into whose possession it went upon its arrival at New Orleans. If you say it went into the possession of defendant, state how long it remained in his possession before he delivered any part of it to plaintiff, and state whether, during this interval, plaintiff demanded of you or defendant, or both, said cotton. If yea, of

whom, and how frequently? State also what was the situation of the cotton market during this interval. If you say it was de-
132 clining, state to what extent.

9th. State whether there was or was not, in February, A. D. 1866, a contract between the U. S. Treasury Department and A. C. Turnbull, with reference to cotton of the same character and in the same locality as that covered by plaintiff's contract, which contract was prior to the other. If you say Turnbull's was the earliest, state what Turnbull had done under his contract prior to plaintiff going to Shreveport with a view to attempting to carry out his, and state what was the effect of Turnbull's contract, and operations under it, with reference to the possibility of plaintiff carrying out his contract.

10th. State any other matter or thing which may make for the benefit of the plaintiff, as fully as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES.
Att'ys for Pl'ff.

133 United States Circuit Court, district of Louisiana.

Notice to cross-interrogatories.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3899.

To Benjamin Flanders:

Take notice that plaintiff in this case has this day filed interrogatories to Oscar H. Burbridge, residing in the State of Ohio, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within three days from the service hereof.

Clerk's office, New Orleans, Sept. 13th, 1867.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received September 14th, 1867, and on same day, month and year I served copies of the within notice to cross-interrogatories, and copy of interrogatories, on Benj. F. Flanders, at his office, in
134 Mechanics' Institute Building, situate on Phillipa street.

New Orleans, La., Sept. 14th, 1867.

(Signed) PHILLIP McKENNA,
U. S. Deputy Marshal.

Nota.

Copy of above interrogatories, with commission, issued September 19th, 1867, but not returned.

U. S. Circuit Court, district of La.

Note of evidence.—Filed January 29th, 1868.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

Note of evidence.

Plaintiff offered the judgment and judgment roll in suit No. 3872, in reference to ⅜; also, testimony of General Canby, on file in this case.

Jno. P. Tweed, Mr. Taney, sworn.

Plaintiff offered memorandum B.

A. Catonnet sworn for plaintiff.

Also document C, and the whole record 3872 and 3857.

135 Defendant offered document "D," and the answer of the Secretary to the same, "O," also E, F, G, H.

Judgment and judgment roll in suit No. 3872, in reference to ⅜, offered by plaintiff, to be found transcribed at page 271.

Testimony of General Canby, offered by plaintiff, transcribed at page 262 to 264 inclusive.

Memorandum B, offered by plaintiff, and filed January 29th, 1868.

Cotton received acc't J. P. Tweed.

W. B. Aiken, 183; rec'd 8 March, '66; class, low midd., long staple; valued by me @ 40c.; sold for 28½c., June 6th, '66.

F. M., 1; rec'd 8th March, '66; class, low mid., long staple, 482 lb. average; valued by me @ 40c.; sold for 33c., May 29th, 1866.

R. T., 23; rec'd 8 M'ch, '66; good ord.; valued by me 39c.; sold for 27, May 24, '66.

L. P., 4; rec'd M'ch 16; strict good ord.; valued by me @ 36c.; sold for 33, May 29, '66.

[U. C.] 12; rec'd M'ch 16; low midd., long staple; valued by me 44; sold for 9 @ 40, April 11, '66; 3 @ 35, May 26, '66.

136 [W.] 40, W. A. B., 32; rec'd March 21; good ord.; valued by me 32; sold for 27c., May 24, 1866.

482 lb. m'd, 40c., sold 28½, diff. 11½c. per lb.	$55 43
Extra ins'e by detention of seizure, $200 @ 2⅜ p'r c't	4 25
Loss by int., 2 p'r c't	3 85
	10 00
Extra press labor and repair	75
	$74 28

Document C, offered by plaintiff, and filed January 29th, 1868.

NEW ORLEANS, *28th January*, 1868.

MR. CATONNET: At the request of Mr. J. P. Tweed I address you in relation to a certain lot of cotton marked W. B. Aiken, which was consigned to Mess. C. A. Weed & Co., of this city; he desires you to refresh your memory in regard to the class of the 200 bales and odd of the above mark; he desires also that you should kindly refer to the quotations of low middling, which he supposes to be the class of the above mark at the time of its arrival, which you will find on referring to price current 7th March, 1866, to be 39½c. for
137 good ord. to low midd. I sold 100 and odd bales of same crop, and it classed low midd., of remarkable good staple, but I recollect distinctly being told your lot was better than mine.

7th March, 1866.

Resp'y y's,

(Signed) C. H. TANEY.

Good ord. l. m., 39½ 40c.
Low midd, 41c. 62c.
20th 23 a. m. good ord. to low md., 31 32.
Record No. 3872 offered by plaintiff "transcribed at page 201 to page 273 inclusive."
Record No. 3857 of this court offered by plaintiff.
Nota.—Record No. 3857 above referred to is on appeal.

Document "D," offered by defendant, and filed January 29th, 1868.

MARCH *22d*, 1866.

SIR: I have telegraphed you this day, as follows:

Tweed purchased 400 bales of cotton under seizure at Shreveport; it is then sent down. The agent writes to O. H. Burbridge
138 that he has not evidence to justify its longer detention, and tells him to release it to Tweed. I have decided that it is Tweed's contract cotton, and hold it as such. Have required production of original bills of sale, which Tweed says are in Shreveport. Is my action approved? Shall I make distribution upon production of sworn copies of bills of sale, or release all?

Tweed and Weed, and others, are interested, and demand release, or at least immediate distribution.

Please answer.

(Signed) BENJ. F. FLANDERS,
Dep'ty General Agent.

Before I heard of the arrival of this cotton, Mr. W. H. Gill, a wealthy and highly respectable planter living near Shreveport, made to me the written statement, which is enclosed marked A. Immediately upon receiving the statement, I went to Mr. Burbridge's office, and ascertained that the cotton had arrived. I enclose the
139 manifest of the boat on which it was brought to the city,

marked B. While I was then in Mr. Burbridge's office, a bill of lading for part of the cotton was handed in (enclosure C; also a letter from General S. G. Burbridge, agent at Shreveport, to Col. O. H. Burbridge, enclosed marked D.) Returning to my office I met Mr. Tweed, who had just arrived from Shreveport. He said that he did not regard that cotton as subject to his contract, because the government had no proof against it. He applied the same day for the release of the whole, which was refused. He was informed that the best that could be done for him was a distribution of the cotton, according to his contract; that that would be done upon his filing with Mr. Burbridge the bills of sale, as required by the contract. He said the originals were left at Shreveport, but he would file sworn copies of them. He and the other parties who appear in the
140 papers as interested in the cotton were very pressing in their demand for it, stating that they would take three-fourths, and wait your decision for the fourth. On their application for the other fourth I insisted upon a strict observance of all the terms of their contract, and at this stage of the case, telegraphed you as above.

Very respectfully, your ob't ser't,

(Signed) B. F. FLANDERS,
Deputy General Agent.

Hon. H. McCulloch, Secretary of the Treasury, Washington, D. C.

Answer of the Secretary, marked O, offered by defendant and filed January 29th, 1868, dated Washington, 23, 186 , received at N. O. March 24th, '66.

To B. F. Flanders, Treas'y ag't:

Your action in Tweed's case approved; hold the cotton without distribution for further direction, and forward all facts by mail.
141 H. McCULLOCH.

Dated Washington 26, 186 ; received at N. O., March 26, '66:
To B. F. Flanders, Treas'y ag't:

Your letter of twentieth received; your action is approved. Mr. Mellen will not return; you will carry out fully my instructions to him of Feb'y 24th; get the letter from Kellogg, if you have not got it.

H. McCULLOCH, *Sec'y Treas'y.*

Dated Washington 31st, '66; rec'd at N. O. March 31st, '66:
To F. Flanders, Treas. ag't:

Remain at New Orleans. Geo. G. Toyg goes down immediately as special counsel to assist you.

H. McCULLOCH, *Sec'y Treas'y.*

Document E, offered by defendant and filed January 29th, 1868.

[Copy.]

Shipped by Putnam, Korms & Co., on board the steamboat
142 called the David Watts, whereof is master, now lying in the port of Shreveport, and bound for New Orleans, La.,

the following articles, marked or numbered as below, which are to be delivered without delay in like order and condition at the said port (unavoidable dangers of navigation and fire only excepted) unto Messrs. Scott, Cage & Co., or assigns, subject to the order of O. H. Burbridge for adjudication, he or they paying freight for the same at the rate of four dollars per bale.

In witness whereof the master, clerk, or agent of the said steamboat hath affirmed to five bills of lading all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Shreveport March 13th, 1866.

Mark.	Articles.	Consignees.	Whose ac.	Charges.
[B] 40.	Forty bales cotton.	Scott, Cage & Co.	J. P. Tweed.	Of the S. B. Lizzie Hamilton as per accompanying bill, $3,361 95.
W. A. B., 32.	Thirty-two bales cotton.	Scott, Cage & Co.	J. P. Tweed.	
143				

Not accountable for condition, weights, or marks.

(Signed) R. M. HAYDOCK, *Cl'k.*

Document F, offered by defendant and filed January 29th, 1868.

[Copy.]

Shipped in good order and well conditioned, by J. P. Tweed, on board the steamboat called the Cuba, whereof is master, now lying at Shreveport, La., and bound for New Orleans, La., to say: Four bales cotton, (4,) marked and numbered as in the margin, (L. P. 4 b. c.,) and are to be delivered, without delay, in the like good order and condition at the port of New Orleans, La., (the dangers of the navigation and fire only excepted,) unto Scott, Cage & Co., or assigns, he or they paying freight for the said cotton five dollars
144 per bale.

In witness whereof the master or agent of said steamboat hath affirmed to four bills of lading all of this tenor and date, one of which being accomplished the others to stand void.

Shreveport, La., March 4th, 1866.

(Signed) W. G. MITCHELL.

Endorsed: Insured under the open policy of O. H. Burbridge, sup. sp'l ag't, Treas. Dep't, New Orleans.

Document G, offered by defendant and filed January 29th, 1868.

[Copy.]

Shipped in good order and well conditioned, by M. Bell, on board the steamboat called the Caddo, whereof Jacobs is master, now lying at Shreveport and bound for New Orleans, to say: Twelve bales of cotton for ac. J. P. Tweed, subject to the order of O. H. Burbridge sp'l ag't, Tr. Dep't., marked and numbered as in the margin, (W. C.,)

and are to be delivered, without delay, in the like good order
145 and condition at the port of New Orleans, (the dangers of the navigation and fire only excepted,) unto Scott, Cage & Co., or assigns, he or they paying freight for the said at five dollars per bale, and charges.

Charges, $423 50.

In witness whereof the master or agent of the said boat hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

March 7th, 1866.

(Signed) T. H. PITTS, *Cl'k.*

Document H, offered by defendant and filed Jan. 29th, 1868.

[Copy.]

Telegram dated New Orleans, 29, 1866. Received at Washington March 29th:

To Hon. H. McCulloch, Sec'y Treas'y:

Bills sale four hundred bales Tweed's Aiken cotton show
146 eighty dollars per bale paid in gold; this telegraph at request of Tweed; all the cotton still held.

(Signed) BENJ. F. FLANDERS,
Dep't Gen'l Agent.

Hearing and order.—Cause continued.

Extract from the minutes of Wednesday, January 29th, 1868:

JNO. P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

This cause came on for trial, Sullivan Billings and Hughes, for plaintiff; J. S. Whitaker and D. Stuart, for defendant.

When, after hearing the pleadings and the evidence, the case is continued till 8th proximo, at 11 a. m.

U. S. Circuit Court.

Answer of U. S. district attorney in behalf of B. F. Flanders as a government officer.—Filed February 3d, 1868.

JOHN P. TWEED *vs.*
147 B. F. FLANDERS. } No. 3899.

And now comes Sam. H. Torrey, district attorney of the United States, and says, that Benjamin F. Flanders, an officer of the United States, described in plaintiff's petition as deputy general agent of

the Treasury Department of the United States, has been sued in this behalf for damages, under and by virtue of certain seizure of cotton made by him in said capacity, and the detention thereof.

Wherefore he now appears for said B. F. Flanders as a government officer and denies all and singular the allegations in said petition contained. He also prays for all general and equitable relief.

(Signed) SAM. H. TORREY, *U. S. Att'y.*

148 Document annexed to said answer, and filed February 3d, 1868, dated Washington, Feb. 3d, 1868; received at New Orleans, La., Feb'y 3d, 1868:

To U. S. Dist. Att'y Torrey:

Appear for Flanders as a government officer in suit, Tweed against Flanders, for thirty-nine thousand ($39,000) dollars damages.

H. McCULLOCH, *Sec'y.*

Motion and order.

Extract from the minutes of Thursday, February 6th, 1868:

JNO. P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

On motion of Sam. H. Torrey, U. S. att'y, and of Stuart and Whitaker, of counsel for defendant, it is ordered by the court that John L. Scott, do produce in court on Saturday, 8th inst., at 11 a. m., all letters, papers, books, accounts, bills of sale, contracts, agreements and invoices, in short all documents in his possession relating to certain 495 bales of cotton or any part thereof in controversy
149 in three suits, 3857, 3872 and 3899, in Circuit Court, and relating to the matters in controversy in above-entitled suit, and especially a certain letter written by John P. Tweed to the said J. L. Scott, to draw on him for $5,200 on account of the interest of the said Scott in the 123 bales of cotton in said No. 3857.

JNO. P. TWEED *vs.* B. F. FLANDERS. } 3899.

On motion of Sam. H. Torrey, U. S. att'y, and of David Stuart and J. S. Whitaker, of counsel for defendant, it is ordered that J. H. McKee, do produce in court on Saturday, the 8th inst., at 11 a. m., all letters, papers, books, accounts, bills of sale, contracts, agreements, invoices, in short all documents in his possession relating to certain 495 bales of cotton or any part thereof in con-
150 troversy in the suits Nos. 3857, 3872 and 3899, in Circuit Court, and relating to the matter in controversy in the above-entitled suit.

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

On motion of Sam. H. Torrey, U. S. att'y, and of Stuart and Whitaker, of counsel for defendant, it is ordered that C. A. Weed do produce in court, on Saturday, 8 inst., at 11 a. m., all letters, papers, books, accounts, bills of sale, contracts, agreements, invoices, in short all documents in his possession relating to certain 495 bales of cotton or any part thereof in controversy in three suits, Nos. 3857, 3872 and 3899, in Circuit Court, and relating to the matter in controversy in the above-entitled suit.

Marshal's return.

Received February 7th, 1868, by the U. S. marshal, and on
151 same day of February, 1868, served copy of within order, &c., on John L. Scott, named herein, personally at his office, 10 Union street, in this city.

New Orleans, Feb'y 8th, 1868.

(Signed) S. W. REED, *Dep't U. S. M.*

Received February 7th, 1868, by the U. S. marshal, and on same day of February, 1868, served copy of within order, &c., on J. H. McKee, named herein, personally at his office, 11 New Levee street, in this city.

New Orleans, Feb'y 8th, 1868.

(Signed) S. W. REED, *Dep't U. S. M.*

Received February 7th, 1868, by the U. S. marshal, and on same day of February, 1868, served copy of within order, &c., on C. A. Weed, named herein, personally at his office, 11 New Levee street, in this city.

New Orleans, February 8th, 1868.

(Signed) S. W. REED, *Dep't U. S. M.*

152 *Order.—Cause continued.*

Extract from the minutes of Saturday, February 8th, 1868:

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

By consent of counsel, this cause fixed for this day is continued till Wednesday, 12 inst., at 11 a. m.

Order.—Renewal of subpœna duces tecum.

Extract from the minutes of Tuesday, February 11th, 1868.

JNO. P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

On motion of S. H. Torrey and J. S. Whitaker, attorneys for defendant, ordered that the subpœna duces tecum herein issued on 6th instant, be renewed and made returnable on to-morrow, 12 inst., at 11 a. m.

Circuit Court of the United States, district of Louisiana.

Note of evidence.—Filed February 12th, 1868.

153 JNO. P. TWEED,
vs. } No. 3899.
B. F. PLANDERS.

Note of evidence.

B. F. Flanders, sworn.
Defendant offered documents 25, 26 and 27.
It is admitted that Mr. Flanders acted in this matter without any malicious intention.

Document 25, offered by defendant and filed February 12th 1868, dated Washington, 10, 186 : received at New Orleans Mar. 10th.

To B. F. Flanders, Treas. Ag't:

Remain at your post and act as dep'ty general agent until otherwise directed. Answer.

H. McCULLOCH,
Sec'y Treas.

TREASURY DEPARTMENT, *March 10th*, 1866.

SIR: You are hereby appointed deputy general agent of
154 this department, to act as such until otherwise instructed.

Respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

B. F. Flanders, esq., New Orleans, La.

Document 26, offered by defendant, and filed February 12th, 1868.

TREASURY DEPARTMENT,
February 24th, 1866.

SIR: Instructions similar to those enclosed you herewith go forward to-day to each supervising agent, relative to the closing up of the

business of all the agencies. You will please see that the supervising agents communicate the instructions as rapidly as possible to all their assistant agents, local agents, sub-agents and contractors; immediately cease their operations, except in accordance with
155 the instructions.

The provision forbidding supervising agents from releasing cotton except by your direction of the direction of the department, arises from a conviction that this course will be less likely than any other to result in complaints of unfair dealing and extortion on the part of local agents and contractors.

You will, therefore, please give your personal attention to the cases where cotton is now under seizure by Mr. Burbridge, Mr. Dent and Mr. Tomeney, and will see that the papers in cases of importance, properly made up, are promptly transmitted to the department for action. In cases where small lots of cotton are under seizure, and it appears to you that there is no evidence sufficient to warrant
156 its detention, you will direct that the same be released, but where the lots of cotton are large, and the evidence is doubtful, you will refer such cases to the department, and it would assist in the decision of the case if you would indicate your opinion thereon.

The contracts of Mr. Tomeney with Messrs. Ogden & Co., and Mr. Burbridge with Mr. J. P. Tweed, are of course included in the instructions for terminating all contracts.

Very respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

Wm. P. Mellen, esq., Gen. Ag't Treas. Dept., New Orleans, La.

Document 27, *offered by defendant, and filed February* 12*th*, 1868.

TREASURY DEPARTMENT,
February 23*d*, 1866.

SIR: After the receipt of this letter you will neither make nor cause nor authorize any seizures or detentions of cotton or other property as captured or abandoned, unless by special written direction
157 in each case from the general agent or direct from the department. In any case which may come to your knowledge, of property belonging to the late so-called confederate government, where the property is of such amount and so situated, with such clear proofs as in your judgment to make it important for the government that it should be secured, you will at once report all the facts (including the evidence and a statement as to the locality of the property, or the direction in which it is moving,) to the general agent or to the department, and await instructions on the subject.

Immediately upon the receipt hereof, you will make a special report to the department of all lots of cotton or other property
158 now under seizure or detention within your agency, by your

authority or direction, or that of any assistant or sub-agent or contractor, together with all the evidence in relation thereto, retaining said cotton in its then locality and condition, protecting the same from loss or damage, but not rebaling any cotton, nor placing it in pickery, nor incurring any unreasonable expense on its account. And no shipment, release or division of the same will be made in any case except by direction of the general agent or the department.

You will also immediately terminate all contracts of whatever nature for collecting captured or abandoned property now outstanding within your agency, by your authority or the authority of any assistant or sub-agent, and also terminate at once all further operations under any such contracts; and you will also immediately furnish to the department a full statement of all such contracts, and of
159 the condition of operations under the same.

You will as soon as possible discontinue the services of all assistant and sub-agents within your agency not absolutely required in the immediate closing up of your business, and no compensation will be paid to any agent or employé in your agency longer than ten days after the receipt of this letter, unless upon special report to the department, stating the reasons therefor, their further continuance in office shall be authorized.

You will make your arrangements to finally close the business of your office as soon as possible, settling or approving the accounts of your subordinates, and promptly forwarding your own accounts for final settlement.

The receipt of this letter will be acknowledged by telegraph.

Respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

B. F. Flanders, esq., Sup. Sp. Ag't Tr. Dep't, 3d agency, &c., New Orleans, La.

160 Circuit Court of the U. S., district of La.

Note of evidence.—Filed February 13th, 1868.

TWEED *vs.* FLANDERS. } No. 3899.

Defendants offered documents 28, 29, 30, 31; also the bills of lading in the record; also letters 32 and 33, document 34; also receipt 35.

Plaintiff objects to 35.

Defendant offered in connection original letter of Tweed, 36.

Plaintiff's objection withdrawn, and document 35 admitted; also document 37.

Ch's A. Weed, Ch's Case Block, J. L. Scott sworn for plaintiff.

Plaintiff offered document 40.

Defendant offered quotations 38 and 39.

Document 28, *offered by defendant, and filed February* 13*th*, 1868, *dated Washington* 6, 1866, *received at New Orleans, April* 6*th*, '66.

161

To B. F. Flanders, dept. gen. agt. Treas. Dept.:

Release Britton cotton unless evidence clearly justifies further detention; in that event, await the arrival of Mr. Fogg, when you and he will fully investigate the whole case and make such disposition of it, and institute such proceedings against all parties as the act warrants; after consulting with Gen. Canby and Mr. Kellogg, answer.

HUGH McCULLOCH,
Sec'ty Treas'y.

Dated Washington, 9, 1866, received at N. O, April 10th, 1866:

To B. F. Flanders:

What have you done in the Britton cotton case? Answer.

H. McCULLOCH,
Sec'ty Treas'y.

Dated Washington 16th, 1866; received at N. O., Ap'l 16, '66:

To B. F. Flanders, Treas'y Ag't:

162 Decide Tweed and Britton cases soon as possible, to prevent further loss from decline; would advise that you carry out Tweed's contract as to what was bought in good faith before its revocation, and leave any bought afterwards unless you have sufficient evidence to justify its being held; report action.

H. McCULLOCH.

[Telegram, copy.]

APRIL 17*th*, 1866.

Hon. H. McCulloch, Secretary of the Treasury, Washington, D. C.:

Your telegram of 16th received; Britton's case release decided on the 11th, and Tweed's on the 14th. Distribution delayed at Tweed's request.

(Signed) BENJ. F. FLANDERS.

Document 29, *offered by defendant, and filed February* 13*th*, 1868, *dated Washington*, 25*th*; *received at N. O. April* 25*th*, '66.

To B. F. Flanders, Treas. Ag't:

163 If all legal proceedings are first dismissed, I will consent that the one-fourth part of the Tweed cotton so-called shall remain at New Orleans until all papers are submitted to me for further considerations and instructions.

H. McCULLOCH.

TREASURY DEPARTMENT,
April 25th, 1866.

SIR: A telegram has been sent to you this day in the following words:

"If all legal proceedings are first dismissed, I will consent that the one-fourth ($\frac{1}{4}$) part of the Tweed cotton, so-called, shall remain at New Orleans until all papers are submitted to me for further consideration and instructions.

(Signed) "H. McCULLOCH,
"*Sec'y of the Treas'y.*"

Respectfully,
(Signed) J. S. HARTLEY,
Asst. Sec'y of the Treasury.

164 B. F. Flanders, Treas'y Agt., New Orleans, La.

Document 30, *offered by defendant, and filed February* 13*th*, 1868.

TREASURY DEPARTMENT,
April 2, 1866.

SIR: I have received your letter of the 22d ult., with enclosures, relative to certain cotton claimed by Mr. Tweed and others, but your telegram on the same subject, therein referred to, was not received.

TREAS'Y DEP'T, NEW ORLEANS, LA.

Your action in the premises as reported is approved. Had you done less I should have regarded you as failing to do your whole duty. From the facts stated, Mr. Tweed manifestly transcended the authority
165 of his contract with the department, and violated its spirit and intent by his course in the premises; but, inasmuch as it appears that he bought the cotton at a price near its value at the place of purchase, and actually paid therefor, I am disposed to give him the benefit of the provisions of the contract in disposing of the case, it being understood, however, that this decision will not be regarded as a precedent in the disposition of other cases of a similar character which may hereafter be brought to the notice of the department.

You are therefore hereby authorized, if you think it best, to make the distribution of the cotton in question contemplated by the contract referred to, shipping to the cotton agent at New York, to be sold as captured property, the portion received as the government's share.

Although I am advised of the general character and object
166 of the contract, I am not familiar with its details, no copy having been transmitted to the department, and am, therefore unable to give you more specific instructions in the case; but I am

willing to leave the whole matter in your hands, with the above indication of my views.

Please report at once your action hereunder.

Respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

B. F. Flanders, esq., Dep'ty Gen'l Ag't Treas'y Dep't, New Orleans, La.

Document 31, *offered by defendant, and filed February* 13*th*, 1868.

TREASURY DEPARTMENT,
March 23*d*, 1866.

SIR: A telegram has been sent to you this day in the following words:

"Your action in Tweed case approved. Hold the cotton without distribution for further directions, and forward all facts by mail.

(Signed) "H. McCULLOCH,
"*Sec'y of the Treas'y.*"

167 Respectfully,

(Signed) J. S. HARTLEY,
Ass't Secretary of the Treasury.

B. F. Flanders, esq., Treasury Agent, New Orleans, La.

Bills of lading in the record offered by defendant, and transcribed at page 141 to 145, inclusive.

Letter 32, *offered by defendant, and filed February* 13*th*, 1868.

TREASURY DEPARTMENT,
April 16*th*, 1866.

SIR: A telegram has been sent to you this day in the following words: "Decide Tweed and Britton cases soon as possible, to prevent further loss from decline. Would advise that you carry out Tweed's contract as to what was bought in good faith before its revocation, and release any bought afterward unless you have sufficient
168 evidence to justify it being held; report action.

(Signed "H. McCULLOCH,
"*Sec'y of the Treasury.*"

Respectfully,

(Signed) J. F. HARTLEY,
Asst. Secretary of the Treasury.

B. F. Flanders, esq., Treasury Ag't, New Orleans, La.

Letter 33, *offered by defendant, and filed February* 13*th*, 1868.

TREASURY DEPARTMENT,
March 26*th*, 1866.

SIR: A telegram has been sent to you this day in the following words:

"Your letter of twentieth (20th) received. Your action is approved. Mr. Mellen will not return; you will carry out fully my instructions to him of February twenty-fourth, (24th.) Get the letter from Kellogg if you have not got it.

169 (Signed) "H. McCULLOCH,
"*Sec'y of the Treas'y.*"

Respectfully,
(Signed) J. P. HARTLEY,
Ass't Sec'y of the Treas'y.

B. F. Flanders, esq., Treas'y Agent, New Orleans, La.

Document 34, *offered by defendant, and filed February* 13*th*, 1868.

[Copy.]

NEW ORLEANS, *April* 20*th*, 1866.

Col. O. H. Burbridge, sup'g sp'l ag't T. D.:

You will release to J. P. Tweed or order two hundred and twenty-wo (222) bales of cotton out of a lot of 295 bales stored in Szymanski's press reserving the seventy-three (73) bales marked and weighed as per accompanying document marked A. Also release to Mr. Tweed or order one hundred and fifty (150) bales cotton out of a lot of 200 bales now stored in the Shipper's press, reserving fifty
170 (50) bales, marked and weighed as per enclosed document marked B.

Very respectfully,
(Signed) BENJ. F. FLANDERS,
Dep'ty Gen'l Agent.

[Copy.]

Selections from 495 (Tweed's) cotton.

L. E. COLLINS.

W. B. Aiken, 46 bales:

F		1-46		
510	520	465	512	482
476	506	466	454	475
492	398	464	508	550
452	465	460	450	530
530	456	458	460	505
568	428	520	515	478
393	506	528	498	
408	515	538	525	
445	521	495	466	
506	498	466	475	
4,780	4,813	4,860	4,863	3,010

	[G] 79	[B]	J S 1-18		
L F	472	570	547	W. A. B.	415
"	505	460	377		590
[J W C]	470	495	525		480
"	470	513	845		463
"	505	512			
R. T.	440	493			
"	450	512			
"	423	503			
"	455	560			
		462			

Recapitulation.

46 W. P. Aiken, midd'g 8, low mid. 14, ord'y 18.
18 low ord'y 6 shipping m'k F 1-46.
2 LP ord'y 2
3 WC " 3 } Shipping m'k [G] 1-9.
4 RT " 4
14 [B] ord. 14, damaged.
5 WAB ord'y 4, damaged. } JS 1-18.
B-c at Szymanski's press.

171 The undersigned are satisfied with the separation of the J. P. Tweed's cotton as made by Messrs. Collins & Chase.

(Signed) SCOTT, CAGE & CO.

W. A. B. Aiken, 50 bales:

508	416	462	492	434
542	470	440	453	424
439	429	437	425	414
526	500	468	388	494
464	460	379	433	454
390	505	500	381	514
453	490	527	514	483
473	379	420	425	470
466	503	464	459	383
418	423	464	450	494
4,679	4,575	4,561	4,420	4,564

50 W. B. Aiken $1 50 mid 6 low mid. 10, ord'y 27.
Low ord. 7 at Shipper's press.

The undersigned are satisfied with the J. P. Tweed cotton as made by Messrs. Hattier & Rainey.

(Signed) C. A. WEED & CO.

Receipt 35, *offered by defendant, and filed February* 13*th*, 1868.

Memorandum of cotton shipped to O. H. Burbridge, sup. sp'l ag't, at New Orleans, under contract with J. P. Tweed, and received March 15, 1866.

172 When received.	No. bales—marks.	Consigned.	Boat rec. from.
Mar. 7th, '66	23, R. T.	Scott, Cage & Co.	Maggie Hays.
	26, W. B. Aiken	"	"
	157, "	"	"
	1, F. M.	"	"
	4, L. P.	"	Cuba.
	200, W. B. Aiken	C. A. Weed & Co.	Maggie Hays.
" 12th, "	12, [W. C]	Scott, Cage & Co.	Caddo.

Rec'd Mar. 14, 1866, from Col. F.
Stored in Shipper's press.

Letter 36, *offered by defendant, and filed February* 13*th*, 1868.

Mr. B. F. Flanders:

I had to start this morning for Shreveport, so you will please deliver to Scott, Cage & Co., and to C. A, Weed & Co., the cotton you will award to me. I regret the delay in this delivery as the market

is falling, and as I was assured by Mr. Burbridge there was nothing against the cotton. I paid a full price for it. I think if any more cotton comes down for my ac. I think you could without injury to the government give up all the cotton on my agent's giving security
173 for the $\frac{1}{4}$ of nett proceeds.

(Signed) J. P. TWEED.

Document 37, *offered by defendant, and filed February* 13*th*, 1868.

SPECIAL ORDERS No. 98.

[Extract.]

HEADQUARTERS DEPARTMENT OF LOUISIANA,
New Orleans, La., May 3*d*, 1866.

1. In conformity with the instructions of the President of the 2d instant, the military control of the cottons embraced in the writ of sequestration issued by the United States Circuit Court for the sixth district, in the case of Tweed *vs.* Flanders, is hereby relinquished, and the provost marshal of the parish of Orleans will turn them over to the custody of the United States marshal.

By order of Major General E. R. S. Canby:

WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:

(Signed) NATHANIEL BURBANK,
1*st Lieut. Acting Ass't Adj't Gen'l.*

174 *Quotation* 38, *offered by defendant, and filed February* 13*th*, 1868.

Quotations of low midd'g cotton:

March	8.	39	40
	10. The same	"	"
	18.	37	38
Ap'l	21.	35	37
	25. The same	"	"
	28. " "	"	"
May	2.	32	34
	5. The same	"	"
	9. " "	"	"
	15. " "	"	"

Quotation 39, *offered by defendant, and filed February* 13*th*, 1868.

Cotton quotations of the city newspapers, examined by M. L. Block:

M'ch	8.	Good ordinary	38 to 39
		Low midd'g	39 " 40
		Middling	43 " 45
	10.	The same	
	18.	Good ord	35 " 36
		Low midd'g	37 " 38
		Middling	40 " 42
	April 21.	Ordinary	30 " 31
175		Good ord'y	33 " 34
		Low midd'g	35 " 37
		Middling	40
	25.	Same quotation	
	28.	" "	
May	2.	Ordinary	27 " 28
		Good ordinary	30 " 31
		Low midd'g	32 " 34
		Middling	36 " "
	5.	Same quotations	
	9.	" "	
	12.	Good ordinary	30 " 31
		Low midd'g	32 " 34
		Middling	36

Document 40, *offered by plaintiff, and filed February* 13*th*, 1868.

Rec'd March 7th, 1867, 157 b.c. W. B. Aiken, sold June 6th, 1867.

Rec'd Mar. 7th, 1867, 1 b.c. F. M., sold May 29th, 1867.

Rec'd Mar. 7th, 1867, 26 b.c. W. B. Aiken, sold June 6th, 1867.

Rec'd Mar. 7th, 1867, 23 b c. R. T., sold May 24th, 1867.

Rec'd March 15th, 1867, 12 W. C., sold 9 April 16th, '67, sold 3 May 26th, '67.

Rec'd March 14th, 4 b.c., L. P., sold May 29th, 1867.

176 Rec'd March 20th, 1867, 72 b.c., [B] W. A. B. 32, B. 40 b.c., sold May 24th, 1867, 295 b.c.

483 lb a 40c sold a—

28½, diff. 11½	55 54
Extra ins'e	3 00
Extra press charges	75
Interest, 2 per cent	4 00
Lawyer's fees at 10 per bale	10 00
Loss and weight, turning out and resampling to at least 15 lb. per bale	6 00
	$79 29

This cotton, on arrival at this port and after being sampled, was valued by me at least 40 c. per pound.

(Signed) C. H. TANEY.

This statement is, as near as memory serves me, correct,

(Signed) C. H. TANEY.

Order.

Cause continued. Extract from the minutes of Thursday, February 13th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS, } No. 3899.

This cause came up agreeably to adjournment. Sullivan, Billings and Hughes for plaintiff. U. S. Attorney Whittaker and Stewart for de endant·

When after hearing further evidence and argument in part the cause is continued till to-morrow at 11 a. m.

177 *Hearing and submission of cause.*

Extract from the minutes of Friday, February 14th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

This cause came up again, Sullivan, Billings & Hughes for plaintiff, U. S. Attorney D. Stuart and J. S. Whitaker for defendant,

When, after hearing further argument, the court took time to advise.

Instructions asked by defendant.—Filed February 14th, 1868.

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

1st. That if the cotton was seized by authorized agents of the Treasury Department and was brought to New Orleans under their order, and with the consent of the plaintiff to have the claim examined and decided by the supervising special agent, or any au-
178 thorized agent of the government, (as the defendant,) under the orders and instructions of the Secretary of the Treasury, under the provisons of the act of Congress of the 3d March, 1863, and 2d July, 1864, and that the said Flanders acted without any fraud or malice in his investigation and decision, and conformed in

his action to the act of Congress and the instructions under the same of the Secretary of the Treasury, he is not liable in this suit.

2d. That if the cotton was seized as captured, abandoned or confiscable cotton, under the acts of Congress above mentioned, while in the possession and ownership of persons residing in Louisiana, and after seizure and while in the custody of the United States by its agents for examination and enquiry, the plaintiff purchased the right to the same while the subject was being enquired of, and there was no unreasonable or intentional delay in the enquiry and examination, the plaintiff is not entitled to recover.

179 3d. That if the court shall find that the plaintiff was in the actual possession of the property, by himself or his consignees, under the seizure of the officers of the Treasury, and that the defendant exercised no control over it but to examine, on behalf of the United States, their title thereto up to the time of the seizure by General Canby of the cotton, and upon such examination surrendered such part as he considered and concluded was not liable to seizure, then the plaintiff cannot recover.

4th. That if the court shall find that the cotton was under seizure at any time by an authorized agent of the Treasury Department, then neither such agent nor the defendant was authorized at any time to release such seizure, except by the special order of the Secretary of the Treasury, and if the defendant acted faithfully under and in obedience to such orders and special instructions of said Secretary, then the plaintiff cannot recover.

180 5th. That if the defendant was acting in the capacity of a referee to examine and report or express and pass his judgment upon the question whether the cotton was of right the property of the government or the property of other persons, or whether there was or was not lawful cause for its detention by the Treasury Department, and if the plaintiff consented to such reference or adjudication, and, further, if the court shall find that he confined his action within the power conferred on him, and acted without malice and in good faith, that then the reference and employment was of a judicial character, and the plaintiff is not entitled to recover.

6th. That if the court shall find that the cotton was under seizure by a seizing officer of the government, exercising his authority under lawful appointment of the Treasury Department, that

181 then the property was irrepleviable by the plaintiff, and he cannot recover in this suit.

7th. That if the property was in law repleviable, and if the court shall find that Flanders was not a trespasser in its seizure, and that the plaintiff himself joined in submitting it for his adjudication or examination into the respective claims of the plaintiff and the United States or others, that then the plaintiff was at liberty, at any time after its arrival in New Orleans, to assert his rights, and that hence the defendant is not liable for any damage growing out of the deterioration of the value of the property from the time of its arrival in New Orleans till the time of its delivery to the plaintiff.

8th. That if the court shall find that the defendant was acting un-

der any orders of the President of the United States or under his authority, made at any time during the existence of the late
182 rebellion, or under color of any law of Congress, such fact is a defence under the act of Congress, and the plaintiff cannot recover.

Statement of damages.—Filed February 14th, 1868.

JNO. P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3899.

Plaintiff's proof on the question of damages:

Decline in cotton from 40c. and upwards to 28 c., 12c. per pound, the weight per bale being 483 lbs....	$57 86-100
Decline on whole lot, 495 bales.....	28,690 20-100
Att'y's fees in two suits.....	6,000 00
Premium for insurance of cotton while detained....	160 00
Storage during same period.....	1,000 00
Clerk's and marshal's fees paid in two suits.....	1,126 13
Total	$36,976 33

(Signed) SULLIVAN, BILLINGS & HUGHES,
Att'ys for Pl'ff.

183 *Statement of cotton values.—Filed February 14th, 1868.*

Decline in cotton, as quoted by the city newspapers, from the 21st of April to the 9th May, 1866, inc., on all grades 3 cts., except on middling, quoted 4 cts. per lb., would am't—

On ¾ or 372 bales, *a* 471 lbs., 175,212, *a* 4c.....	$7,008 48
And on ¼, 123 bales, 471, 57,933 lb., *a* 4c.....	2,317 32
Decline on the whole 495 bales.....	$9,325 80

482	183,	88,206, *a* 40.....	$35,282 40
183	1,	482, ...	192 80
23,	11,086,	39.....	4,323 54
1,446	4,	1,928, 36.....	694 08
3,856	12,	5,784, 44.....	2,544 96
483	72,	34,704, 32.....	11,105 28
88,206			$54,143 06
40			
3,528,240			

Or average per lb. 38⅛.

Corrected and exact amount of losses claimed by J. P. Tweed on account of the detention of 495 bales cotton, calculated at J. P. Tweed's own figures:

184

183	b. c. a	482 lb.,	64,206 lb.,	loss claimed 11½c per lb..	$7,383 69
1	"	482	482	loss claimed 7c per lb....	33 74
23	"	482	11,086	loss claimed 12c per lb...	1,330 32
4	"	482	1,928	loss claimed 3c per lb....	57 74
9	"	482	4,338	loss claimed 4c per lb....	173 52
3	"	482	1,446	loss claimed 9c per lb....	130 14
72	"	482	34,704	loss claimed 5c per lb....	1,735 20
295			118,190 lb.		$10,844 35

Or an average loss per bale of $36 76, making on 495 bales a loss, according to his own calculation, $18,196 20.

The weigher's certificate show the average weight of the bales to be 471 lb., instead, as claimed, 482 lb., or a difference of 11 lb. per bale, making—

On 495 bales, 5,445 lb., loss at the average price per pound of 38⅛c	$2,075 91
Leaving, as per statement of plaintiff filed, the amount of losses	16,120 29

185 *Judgment.*

Extract from the minutes of Wednesday, February 26th 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

For reasons orally assigned by the court, it is ordered, adjudged and decreed, that John P. Tweed do have and recover from the defendant, Benjamin F. Flanders, the sum of thirty-six thousand nine hundred and seventy-six dollars and 33 cents, with 5 per cent. interest thereon from judicial demand till paid, and costs of suit.

Rule for a new trial.

Extract from the minutes of February 29th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

186 On motion of S. H. Torrey, district attorney, and of Whitaker and Stuart, attorneys for B. F. Flanders, and special

counsel of the United States, it is ordered that plaintiff show cause on Saturday, the 7th proximo, at 11 a. m., why a new trial should not be granted in this cause on the grounds filed.

Grounds.—Filed February 29th, 1868.

1st. That the defendant was acting in the capacity of an officer of the Treasury Department of the United States, to wit, as a deputy general agent, and necessarily under the duties imposed on him, was clothed with powers in their nature quasi-judicial.

2d. That it was admitted and spread on the record, that all his acts and doings in respect to the property of defendants was free from malice or the slightest malicious intention.

3d. That it was shown when plaintiff purchased the property that it was under seizure by the Treasury officials; that it
187 was shipped to New Orleans by the plaintiff himself to an officer of the government, subject only to be delivered up to said plaintiff after it was determined by the proper officer that it was not liable to forfeiture as property captured or abandoned, and that no damage could be suffered during the necessary detention for such requisition and adjudication.

4th. That the evidence of ownership in plaintiff, as presented to the government officials, and the proofs offered of his right to receive the property upon its arrival here, were not sufficient to authorize an immediate adjudication.

5th. That the property was always under the control of plaintiff, and could have been taken by legal process, and that said plaintiff in shipping it to New Orleans himself, by his contract of affreightment, submitted the property to its final adjudication by an
188 officer of the Treasury, and could not complain of its detention

6th. That the detention of the property was of no greater duration than in the multiplicity of affairs occupying the agent of the government would necessarily arise under the circumstances.

7th. That the amount of damages as assessed by the court under the evidence is excessive; that the highest estimate on deteriorated value of the cotton during the period of detention has been assessed, when in this conflict of testimony showing various values, the lowest should have been assessed as the measure of damages.

8th. That were compensatory damages due for deterioration of the property during its detention, that the amount estimated by the court is not compensatory, being greater than that actually
189 proven, and thus becomes vindictive damages.

9th. That finally the judgment is contrary to law and evidence.

Marshal's return.

Received March 2d, 1868, by the U. S. marshal, and on same day of March, 1868, served copy of within rule, &c., on Sullivan, Billings

& Hughes, attorneys named herein, in the hands of J. F. Latham, their clerk, at office 82 Custom-house street, in this city.

New Orleans, March 3d, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

Order.—Rule for a new trial continued.

Extract from the minutes of March 7th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

The rule herein pending was called, and by consent of counsel continued till Tuesday, 10th instant, at 11 a. m.

190 Hearing and order rule discharged and a new trial refused.

Extract from the minutes of March 10th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

The rule for a new trial, herein returnable, was called up.

S. H. Torrey, U. S. attorney, and J. S. Whitaker for plaintiff in rule; Sullivan, Billings & Hughes for defendant in rule.

When, after hearing argument, it is ordered that the rule be discharged and a new trial refused, with costs.

United States Circuit Court, fifth circuit and district of Louisiana, November term, 1867.

Judgment, from judgment docket.

NEW ORLEANS, *Wednesday, February 26th*, 1868.

Court met pursuant to adjournment. Present: Hon. E. H. Durell, district judge.

191 JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

For reasons orally assigned by the court, it is ordered, adjudged and decreed, that John P. Tweed do have and recover from the defendant, Benjamin F. Flanders, the sum of thirty-six thousand nine hundred and seventy-six dollars and 33 cents, with 5 per cent. interest thereon, from judicial demand till paid, and costs of suit.

Judgment rendered February 26th, 1868.

Judgment signed March 11th, 1868.

(Signed) E. H. DURELL, *Judge.*

In the Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

Petition and order for writ of error.—Filed March 12th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

192 To the Hon. the Circuit Court of the United States:

The petition of Benjamin F. Flanders, sued in this behalf as deputy general agent of the Treasury Department of the United States, respectively shows that he is aggrieved by a final judgment rendered against him in this cause, and is informed that there is error to his prejudice in said judgment; that he is ordered by the Secretary of the Treasury of the United States, on behalf of the government thereof, to prosecute a writ of error in this case, with the object of having the decision of this court reviewed in the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed him, returnable on the first day of the next term of the Supreme Court, and that the same may operate as a supersedeas herein, without bond, obligation or security being demanded. And your petitioner will

193 ever pray, &c., &c.

(Signed) SAM. H. TORREY,
U. S. Att'y.

(Signed) J. S. WHITAKER,
" D. STUART,
Special Counsel.

Order.

A writ of error to operate as a supersedeas is allowed in this case, as prayed for, and according to law returnable to the Supreme Court of the United States on the first Monday of December next, the United States being dispensed from giving bond in judicial proceedings.

March 12th, 1868.

(Signed) E. H. DURELL, *Judge.*

Circuit Court of the United States for the district of Louisiana.

Judge's certificate.—Filed May 13th, 1868.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

In pursuance of the 8th section of the act of Congress approved July 28th, 1866, extending the provisions of the 2nd, 3d, and

194 4th sections of the act of March 2nd, 1833, and of the 12th

section of the act of March 3d, 1863, to cases arising against any officer of the United States by reason of any act done under authority or color of the act of March 12th, 1863, or the act of July 2nd, 1864: Provided that such acts done or proceedings had under the two last acts aforesaid, or under color thereof, shall have been done and had under the authority or by the direction of the executive government of the United States. The undersigned certifies in this suit, wherein on the 11th day of March, 1868, the plaintiff, by the final judgment of this court, recovered the sum of thirty-six thousand nine hundred and seventy-six 33-100 dollars, with his costs of suit, which are taxed at the sum of $96 35; that defendant acted under the directions of the Secretary of the Treasury.

(Signed) E. H. DURELL, *Judge.*

195 Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

Statement of facts.—Filed May 29th, 1868.

JOHN P. TWEED
vs.
BENJAMIN F. FLANDERS. } No. 3899.

This cause came on to be tried on the pleadings, by the consent of parties, by the judge presiding, and after hearing the evidence therein, and the argument of counsel, the court finds the following facts:

Certain agents of the Treasury Department of the United States before the first of March, eighteen hundred and sixty-six, in various localities in the vicinity of Shreveport, on Red river, Louisiana, seized four hundred and ninety-five bales of cotton, on the claim or pretence that it was the property of the United States by capture, or as having been sold to the Confederate States government,
196 or subject to forfeiture under the acts of Congress, and forwarded it to S. G. Burbridge, the assistant supervising special agent of the Treasury Department at Shreveport. Whilst these cottons were thus under seizure, and in custody of the said S. G. Burbridge, and early in March, eighteen hundred and sixty-six, the plaintiff, Tweed, being informed by him that he had no sufficient evidence in his possession on which to condemn the property, and that he, Tweed, might buy it, purchased it from the several claimants from whom it had been seized, at a price its then market value in Shreveport. He shipped to his consignees, Scott, Cage & Co., of New Orleans, two hundred and ninety-five bales, and to Weed & Co. two hundred bales, on bills of lading marked in the record, numbered eight, nine, ten, eleven, twelve, and thirteen, subject to the order or adjudi-
197 cation and insured in the open policy of O. H. Burbridge, agent, etc. The cottons were received and held in store by the consignees respectively, with notice to refrain from disposing of them until they had been adjudicated by the order of the Secretary of the Treasury.

Flanders was appointed deputy general agent of the Treasury -Department on the tenth day of March, eighteen hundred and sixty-six, and was ordered by the Secretary to examine into and report on the claims of the United States and the rights of the several claimants to the cottons received and held by the supervising special agent at New Orleans. In the discharge of this order he entered upon the inquiry in respect of the cottons claimed by Tweed.

On the twenty-third day of January, eighteen hundred and sixty-six, Tweed entered into a contract with the Treasury Department (in the record marked A) by which he was permitted to
198 purchase a description of cottons which by law were the property of the United States, on conditions that he should receive three-fourths of them, and government one-fourth. This contract was revoked, by the order of the Secretary, on the twenty-third day of February, eighteen hundred and sixty-six. Flanders asserting that these cottons were purchased under the contract, claimed to hold one-fourth of the cottons for the United States, which was resisted by Tweed, who denied the right of the United States to any portion of the cottons, and the facts were laid by Mr. Flanders before the Secretary for his decision, who replied by letter, dated April second, eighteen hundred and sixty-six, (in the record marked number fourteen.) Flanders thereupon surrendered, on the twentieth of April, three-fourths of the cottons, reserving in store the remaining one-fourth. On the twenty-first day of April, eighteen hundred and sixty six, Tweed prosecuted out of the Cir-
199 cuit Court of the United States a writ of sequestration, numbered three thousand eight hundred and fifty-seven on the docket of said court, upon which the one-fourth cotton was taken possession of by the United States marshal, and was bonded and delivered to the plaintiff on the eight day of May, eighteen hundred and sixty-six.

That on the twenty-fourth day of April, eighteen hundred and sixty-six, Major General Canby, then commanding the department of Louisiana, at the request of Flanders, seized the three-fourths share of the cottons which had been delivered by Flanders to Tweed, and placed the same under a military guard. That on the twenty-fifth day of April, eighteen hundred and sixty-six, a writ of sequestration was sued out of this court by the plaintiff to recover possession of these three-fourths, which on the third day of May, eighteen hundred and sixty-six, and so soon as the guard was
200 withdrawn by General Canby, was also taken possession of by the United States marshal, and was bonded and delivered to the plaintiff on the fifteenth day of May, eighteen hundred and sixty-six.

The records in the two sequestration suits, numbered three thousand eight hundred and fifty-seven, and three thousand eight hundred and seventy-two on the docket of this court, in each of which plaintiff recovered judgment affirming his title and claim to the cotton, were introduced in evidence, and form part of this record. It was proved that the cottons, during the period of detention, depreciated in mar-

ket price or value cents per pound; that plaintiff paid out for storage and insurance one thousand one hundred and sixty dollars, and for counsel fees six thousand dollars; that Flanders acted under and in obedience to the directions and special orders of the Secretary of the Treasury, and was admitted by the plaintiff
201 to have acted in good faith and without malice.

(Signed) E. H. DURELL, *Judge.*

Record No. 3872 of this court, offered in evidence by plaintiff Janury 29th, 1868.

Petition, affidavit, and order for writ of sequestration, filed April 25th, 1866.

United States Circuit Court.

JOHN P. TWEED
vs.
BENJAMIN F. FLANDERS, DEPUTY GENERAL agent of the U. S. Treasury Dept.

To the honorable the Judges of the United States Circuit Court for the Sixth Judicial Circuit and Eastern District of Louisiana:

The petition of John P. Tweed, who is a citizen of the State of Ohio, respectfully shows and states, that he is the owner of,
202 and entitled to the possession of three hundred and seventy-two (372) bales of cotton, one hundred and fifty (150) bales of which are stored in the shippers' press, and marked W. B. Aiken, and two hundred and twenty-two bales of which are stored in Szymanski's press, and marked as follows, viz.:

One hundred and thirty-eight (138) bales, W. B. Aikin.
Nine (9) bales, S. P.
Nine (9) bales, [W. E.]
Twelve (12) bales, R. T.
Forty-two (42) bales, [B.]
Twelve (12) bales, W. A. B.

All in the city of New Orleans; that Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, who is a citizen of the State of Louisiana, unjustly retains possession of said cotton, and refuses to deliver the same to your petitioner; that no part of said cotton is captured or abandoned property under any act of Congress, nor by virtue of any military seizure; nor has the government of the United States any right, title, or interest in the same, or
203 to any part thereof; that said cotton is of the value of sixty thousand dollars; that said cotton is the property of your petitioner, and is in the possession of the said B. F. Flanders, and that he fears that said B. F. Flanders will, during the pendency of this suit, dispose of and remove said cotton out of the jurisdiction of this court; that said cotton is of the value of sixty thousand dollars. Wherefore your petitioner prays that the premises, the annexed affidavit and bond being considered, without prejudice to his right of

action to recover damages for the unlawful detention of said cotton the said Benjamin F. Flanders may be cited to answer the foregoing petition; that a writ of sequestration issue, directing the United States marshal of this court to take said three hundred and seventy-two bales of cotton into his possession, and hold the same until
204 the further order of this court; and that, after due proceedings, your petitioner have judgment decreeing that said three hundred and seventy-two bales of cotton are the property of your petitioner, and that the same be delivered to him, or, in default thereof, that he have judgment against the said Benjamin F. Flanders for said sum of sixty thousand dollars, with legal interest thereon from judicial demand, with privilege upon the property sequestered, and for his costs and for all general and special relief.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Plaintiff's Att'ys.

[50c. int. rev. stamp affixed and cancelled.]

Affidavit.

STATE OF LOUISIANA, *Parish of Orleans, ss*:

Personally appeared John P. Tweed, who, being duly sworn, says that he is the petitioner named in above petition, and that all the facts and allegations set forth in his foregoing petition are true and correct.

(Signed) JOHN P. TWEED.

205 Sworn to and subscribed before me, this 25th April, 1866.

(Signed) F. B. VINOT,
D'y Cl'k.

Order.

Let a writ of sequestration issue, as prayed for, upon plaintiff giving bond in the sum of eight thousand dollars, with good and solvent security, and conditioned according to law.

New Orleans, April 25th, 1866.

(Signed) E. H. DURELL, *Judge.*

United States Circuit Court.

Bond for sequestration.—Filed April 25th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

Know all men by these presents, that we, John P. Tweed, as principal, and J. B. Oglesby, as surety, are held and firmly bound, jointly and severally, unto Benjamin F. Flanders, deputy
206 general agent of the United States Treasury Department, in

the sum of eight thousand dollars, lawful money of the United States of America, to be paid to the said Benjamin F. Flanders, in his said capacity, his heirs, executors, administrators and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the twenty-fifth day of April, in the year of our Lord eighteen hundred and sixty-six.

Whereas John P. Tweed has this day presented a petition to the honorable the Circuit Court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of sequestration against three hundred and seventy-two bales of cotton, fully described in the petition of said plaintiff and obligor, on file in the said court:

207 Now the condition of the above obligation is, that we, the above-bounden John P. Tweed and Joseph H. Oglesby, will well and truly pay to the said Benjamin F. Flanders, in his said capacity the defendant in said suit and sequestration, all such damages as he may recover against us, in case it should be decided that the said sequestration was wrongfully obtained.

(Signed) J. P. TWEED.
(Signed) JOS. H. OGLESBY.

Signed, sealed and delivered in the presence of
(Signed) M. H. TILDEN, JR.

[25c. int. rev. stamp affixed and cancelled.]

Circuit Court of the United States, Sixth Circuit and Eastern District of Louisiana.

Writ of sequestration.—Issued April 25th, 1866. *Returned and filed May 4th*, 1866.

JOHN P. TWEED
vs.
208 BENJAMIN F. FLANDERS, deputy general agent of the U. S. Treasury Department. } No. 3,872.

UNITED STATES OF AMERICA, *Eastern district of Louisiana*:

The President of the United States of America to the marshal of the United States for the eastern district of Louisiana, greeting:

You are hereby commanded to sequester and take into your possession, according to law, three hundred and seventy-two bales of cotton, 150 bales of which are stored in the shippers' press, and marked W. B. Aikin, and 222 bales of which are stored in Szymanski's press, and marked as follows: 138 bales, W. B. Aikin; 9 bales, S. P.; 9 bales, [W. E.]; 12 bales, R. T.; 42 bales, [B.]; 12 bales, W. A. B.; all in the city of New Orleans, which said 372 bales of cotton have been illegally taken possession, and are now held by

Benjamin F. Flanders, deputy general agent of the U. S.
209 Treasury Department, and a citizen of the State of Louisiana, and are claimed by the plaintiff herein as his property, as alleged in his petition on file; and of what you may do in the premises make due return to our said court.

Witness the honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, at New Orleans, this 25th day of April, A. D. 1866.

[SEAL.] (Signed) CHAS. CLAIBORNE, *C'lk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

In obedience to the within writ I proceeded to the Szymanski's press, situated on Front Levee street, near Montegut street, in this city, and there and then, viz, on the 25th day of April, 1866, exhibited this writ to, and served a notice of seizure on, G. P. Ring, clerk of said press, and there endeavored to seize 222 bales of cotton, marked as within described, and which were exibited to
210 me by said clerk, but could not seize them actually, for the reason that I found a guard of soldiers from the provost marshal of the parish of Orleans in possession of said cotton, and although the said clerk gave me a receipt for the said 222 bales because they were in the press, still he could not give me possession, because the military had them in possession as above stated. I then proceeded to the shipper's press office, corner of Robin and Henderson streets, in this city, and there exibited this writ and presented a notice of seizure to P. I. McGrath, yard clerk of said press, and demanded of him possession of 150 bales of cotton, marked as within described; said clerk exibited the 150 bales to me, but refused to sign a receipt, and could not give me possession of said 150 bales because they were in charge of the military. I saw the
211 U. S. soldiers there on the said cotton, and said yard clerk gave me a written statement of his reasons for not signing or giving possession, as well as a copy of the notice of seizure furnished him by the special officer of the provost marshal of the parish of Orleans. The said documents are enclosed herein for more specific reference.

This writ returned executed in the manner above set forth and returned this 26th April, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Marshal's final return.

MARSHAL'S OFFICE, *May 4th*, 1866.

U. S. marshal's final return received at this office this 3d May, 1866, a document addressed to "Cuthbert Bullitt, U. S. marshal," a copy of which is annexed to this return, of which it is a part; and in accordance with the tenor of that document, I, on the

212 same 3d day of May, 1866, did proceed to the office of Major J. M. Jackson, provost marshal of the parish of Orleans, and to him exibited the document referred to, and respectfully requested of him a compliance with the instructions to him therein contained, and the said provost marshal thereupon directed an officer to proceed forthwith with me, and remove the military guard which had been placed over the cotton, in the presses where said guard had been placed, and to turn over the cotton to the possession of the U. S. marshal. The said officer complied with his instructions, and I then seized and took into my possession, in obedience to this writ, three hundred and seventy-two bales of cotton, in the following manner and places, viz: Presented to P. McGrath, yard clerk of shipper's press, this writ, and served a notice of seizure on him for 150 bales of cotton, marked W. B. Aiken, said clerk exibited the 150 bales to me, and I then seized said cotton and took it into my posses-
213 sion, and left it there on storage; first obtaining from said clerk a receipt for said cotton, which receipt is on file in this office, and in favor of the U. S. marshal.

I then proceeded to Szymanski's press and presented this writ, and served notice of seizure, and seized and took into my possession 222 bales of cotton, of various marks, as per this writ, which G. P. Ring, superintendent, showed to me after having seen this writ, and received said notice of seizure, and he then gave me a receipt for said 222 bales, in favor of the U. S. marshal, which receipt is on file in this office.

Writ returned fully executed, this 4th May, 1866.

(Signed) J. J. PREIS, *D'y U. S. Marshal.*

Document annexed to marshal's final return.

(Copy.)

[Special Orders, No. 98.]

214 HEADQUARTERS DEPARTMENT OF LOUISIANA,
NEW ORLEANS, LA., *May 3d*, 1866.

[Extract.]

"In conformity with the instructions of the President, of the 2d instant, the military control of the cotton embraced in the writ of sequestration, issued by the United States Circuit Court for the sixth district, in the case of Tweed vs. Flanders, is hereby relinquished, and the provost marshal of the parish of Orleans will turn them over to the custody of the United States marshal.

"By order of Major General E. R. S. Canby.

"(Signed) WICKHAM HOFFMAN,
"*Assistant Adjutant General.*"

Official.

(Signed) NATHANIEL BURBANK,
1st Lieut., Acting Assist. Adj't General.

Citation.

215 JOHN P. TWEED
vs.
BENJ. F. FLANDERS, DEPUTY GENERAL AGENT of the U. S. Treasury Department. } No. 3,872.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commmanded to summon Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, and a citizen of the State of Louisiana, to comply with the demand of John P. Tweed, a citizen of the State of Ohio, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held,
216 and that you make due return hereof on the first Monday of May, 1866.

Witness the honorable Salmon P. Chase, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 25th day of April, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

[SEAL.] (Signed) CHAS. CLAIBORNE, *Clerk*,
By F. B. VINOT, *Deputy Clerk*.

Marshal's return.

Received April 26th, 1866, and on the same day served a copy of the within citation, and plaintiff's petition accompanying the same, on B. F. Flanders, the defendant named herein, personally at his office, corner of Crossman and Levee streets, in this city.

New Orleans, April 27th, 1866.

(Signed) M. EGAN, *D'y U. S. Marshal*.

217 *Rule taken by plaintiff on Major General E. R. S. Canby.*

Extract from the minutes, April term 1866:

NEW ORLEANS, *Thursday, April 26th*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

On motion of Sullivan, Billings and Hughes, of counsel for petitioner, and upon suggesting that a writ of requisition has been issued herein,

by which the marshal of this court was commanded to take into his possession certain lots of cotton, to wit: 150 bales marked W. B. Aikin, stored in shippers' press, and 222 bales marked various marks in Szymanski's press in the city of New Orleans, and upon further suggesting that the execution of said writ is obstructed, and the said marshal prevented from taking possession of said mentioned
218 lots of cotton by a guard of soldiers claiming to act under the orders of Major General E. R. S. Canby, commanding the department of Louisiana, and Major A. M. Jackson, provost marshal general of said department, as will appear by the return of said marshal on said writ, and that said interference is made at the request of the defendant herein:

It is ordered that the said Major General E. R. S. Canby, the said Major A. M. Jackson, and Hon. B. F. Flanders, defendant herein, withdraw all objections to the execution of said process of this court, or that they and each of them show cause before this court on 27th day of April, 1866, at 11 o'clock in the forenoon, why they should not be punished as for a contempt, for preventing the execution of a mandate of this court in a cause now pending before it and within its jurisdiction.

219 *Marshal's return.*

U. S. marshal's return, and on the 26th day of April, 1866, served a copy of the within rule on B. F. Flanders, supervising special agent Treasury Department U. S., personally at his office, corner of Crossman and Levee streets in this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

And also a copy of the within rule was on the 26th day of April, 1866, served on General E. R. S. Canby, commanding department of Louisiana, by leaving it at his headquarters in the hands of Louis V. Caziars, A. D. C., and a copy also on Major A. M. Jackson, provost marshal of Orleans, personally at his office, corner of Baronne and Union streets in this city.

New Orleans, April 27th, 1866.

(Signed) G. HOLLANDER,
D'y U. S. Marshal.

Order.—Continuance of rule.

Extract from the minutes of Friday, April 27th, 1866:

220 JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

The rule herein taken by plaintiff on the 26th inst. came up for trial, Sullivan, Billings and Hughes for plaintiff in rule; Durant and

Hornor for the defendant, B. F. Flanders, Major General Canby and Major Jackson in person. When upon the application of Durant and Hornor, esquires, ordered that the rule be continued until to morrow at 11 a. m.

Filed April 28th, 1866.

U. S. Circuit Court.

Answer of B. F. Flanders to rule.

JOHN P. TWEED
vs.
B. F. FLANDERS.

Now comes the defendant, Benj. F. Flanders, and in answer to the rule herein taken upon him by plaintiff to show cause why all impediments to the writ herein issued should not be removed
221 or answer for a contempt, respectfully shows:

That the cotton in controversy was not in his possession at the time the writ of sequestration herein issued was applied for and ordered, and has never been since in his possession, and that neither at the time of the inssuance of the writ nor since has he ever had any control over the said property.

(Signed) BENJ. F. FLANDERS.

Answer of General Canby to rule.—Filed April 28th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS. No. 3,872.

To the Circuit Court of the United States in and for the sixth circuit and eastern district of Louisiana:

In the case of John P. Tweed vs. Benjamin F. Flanders pending in this court, I respectfully make return to the rule of the hon-
222 orable court, that the property claimed by the plaintiff is held by me as property of the United States, acquired by lawful capture on land, and subject to the exclusive jurisdiction and control of the executive authority of the United States. The title passed by the act of the capture, no judicial process is necessary to perfect that title, and none can be invoked to set it aside. If no remission is made by the executive authority, it must be sold and the proceeds paid into the Treasury of the United States, subject to the reclamation that may be made by persons who can bring themselves within the condition prescribed by the 3d section of the act of Congress, approved March 12th, 1863. Statutes at large, Vol. XII, page 820.

The uniform rule of public law, that property captured on land, as soon as reduced to possession and without judicial condemnation, becomes the property of the State, is followed by the statutes of

March 12th, 1863, and July 2nd, 1864; and the duties of military, naval and civil officers under those laws, the regulations made in pursuance thereof, and the orders of the President, are clear and distinct.

No nation has yet given the jurisdiction of land capture to the civil courts except incidentally and for specified purposes. In England the High Court of Admiralty exercises jurisdiction only in cases which are referred to it by the crown with the advice of the privy council. and in this country it is committed to the Court of Claims for the special purpose of relief to loyal persons whose property may have been captured.

This jurisdiction is constitutionally and legally committed to the executive authority of the United States, and all questions affecting the title control or disposition of such property, until it is sold, the proceeds paid into the Treasury, and the jurisdiction of the Court of Claims becomes operative are subject to their exclusive jurisdiction. In the exercise of this duty their acts are quasi judicial, are not subject to review by courts or juries, and their orders are conclusive and binding upon all subordinates.

Under the 7th section of the act of Congress approved March 12th, 1863, and under the orders of the President and the Secretary of War, made in pursuance of that law, I turned over to the proper agents of the Treasury Department the control and custody of all property acquired under the laws of war and the laws above cited, and under authority delegated to me by the Secretary of the Treasury dated March 29th, 1866, and upon satisfactory evidence that the cotton claimed by the plaintiff in this case, is in part if not wholly the property of the United States, I have now seized and hold it, subject to the ultimate decision and orders of the Secretary of the Treasury; and in conformity with the laws, regulations and orders above cited, and with the spirit of the instructions of the Secretary of the Treasury of the above cited date of March 29th, 1866, it is my duty and my intention to send this cotton to the city of New York, and there turn it over to the agent of the Treasury Department designated to me by the Secretary of the Treasury, and in conformity with the same instructions, I will transmit to him for his consideration and determination the evidence upon which it has been seized and is now held.

I now hold this property as I hold the forts, armaments, munitions of war, and other public property captured from the enemy or committed to my custody, and that I have no power or authority to relinquish that custody or transfer it to any officers or persons, except such as have been or may be designated by the President, or by the head of the Executive Department controlling such property; and I make further return to this rule that the action taken, or to be taken by me, is in obedience to an imperative and defined duty, and that it is no way, in intent or in spirit, from disrespect to the honorable court, or in contempt of its mandates. How far it may be so regarded or may merit punishment is for the court to determine; but I respectfully submit that the property claimed by

the plaintiff is not in the custody or under the control of the defendant, and that Major A. M. Jackson, the provost marshal of the parish of Orleans, is acting under my orders; that the responsiblity for this action rests upon me, and not upon them; and that any punishment that may be ordered by the court should be directed against me, and not against them.

(Signed) E. R. S. CANBY, *M. G. C.*

227 *Minutes of evidence on rules for contempt.—Filed April 28th, 1866.*

JNO. P. TWEED *vs.* B. F. FLANDERS. } No. 3,872.

Minutes of evidence on rule for contempt:

O. H. Burbridge, sworn for plaintiff, offered in evidence documents A, B, C, and D.

Documents A, B, C and D offered by plaintiff, and filed April 28th, 1866.

Document A.

OFFICE SUP. SP'L AG'T, 3D AGENCY, NEW ORLEANS, LA., *April 21st*, 1866.

Szymanski's Press, New Orleans, La. :

You will deliver to Mr. J. P. Tweed two hundred bales cotton, out of a lot of two hundred and ninety-five stored with you by Scott, Cage & Co., on acc. of J. P. Tweed, marked various. The cotton reserved from this lot will be in accordance with the paper
228 accompanying, marked "B." Mr. Tweed will pay all proper and legitmate charges.

Respectfully,

(Signed) O. H. BURBRIDGE,
Supt. Sp'l Ag't, 3d Agency.

Accepted April 21st, 1866.
(Signed) IG. SZYMANSKI.
By G. P. RING.

Document B.

OFFICE SUP. SP'L AG'T, NEW ORLEANS, LA., *April 21st*, 1866.

Shippers' Press, New Orleans, La. :

You will release to J. P. Tweed one hundred and fifty bales cotton, out of the lot of (200) two hundred stored with you by C. A. Weed & Co., on acc. of J. P. Tweed, marked W. B. Aikin; the

fifty reserved will be those noted in the the accompanying paper, marked "A," Mr. Tweed paying all charges.

Respectfully,

(Signed) O. H. BURBRIDGE,
229 *Sup. Sp'l Ag't.*

Accepted April 21st, 1866.

(Signed) SAM. BOYD & RAINEY,
Per P. J. McGRATH, *Yard Clerk.*

Document C.

OFFICE SUPERVISING SPECIAL AGENT TREASURY DEPARTMENT,
THIRD AGENCY, NEW ORLEANS,
April 20th, 1866.

Col. O. H. Burbridge, Sup. Sp'l Ag't, T. D.:

You will release to J. P. Tweed or order two hundred and twenty-two (222) bales of cotton, out of a lot of 295 bales stored in Szymanski's press, reserving the seventy-three (73) bales marked and weighed, as per accompanying document marked A. Also release to Mr. Tweed or order one hundred and fifty (150) bales cotton out of a lot of 200 bales now stored in the shippers' press, reserving fifty (50) bales, marked and weighed, as per enclosed document marked B.

Very respectfully,

230 (Signed) BENJ. F. FLANDERS,
Dep. Gen'l Ag't.

Document D.

Whereas it is represented that large lots of cotton which formerly belonged to the late so-called confederate States, still remain uncollected upon and near the Red river and the Ouachita river and their tributaries, which are in the possession of persons claiming to be the owners thereof, and the marks upon which have been destroyed, and the identification of which is difficult, if not impossible:

And whereas it is als represented that the best mode of securing this cotton to the United States is to make satisfactory arrangements with the holders, under which they will release their pretended claim to it and co-operate with the agents of the government in sending it forward:

Now therefore it is hereby agreed by and between John P. Tweed and Oscar H. Burbridge, supervising special agent ap-
231 pointed by the Secretary of the Treasury to collect captured cotton in the third special agency, as follows, viz:

Said Tweed hereby agrees to furnish all the money necessary to procure the cotton aforesaid and all assistants necessary for the purpose, and all necessary means of transportation, and to use all proper efforts to procure as much cotton of the description aforesaid, within the section aforesaid, as can be procured, prepared for ship-

ment, and transported to New Orleans and delivered there in good shipping order at a cost of not exceeding three-fourths its value, and to deliver the same to said Burbridge in good shipping order, with receipted bills of sale or discharges thereof from the holders free of all expense or cost, in any way connected therewith.

And said Burbridge hereby agrees that upon delivery to him in New Orleans as aforesaid, of each lot of cotton so procured,
232 with the receipted bills of sale or discharges from the holders thereof as aforesaid, and free and discharged of all costs and expenses of every description in any way connected therewith, he will pay and deliver to said Tweed three-fourths of the same of average quality, as compensation in full for all services performed and for costs and expenses incurred by him in relation thereto, which three-fourths so paid and delivered to him shall be regarded as a sale to him by the United States, and shall not be subject to payment of internal revenue, or if held subject to such payment, the same shall be made by said Burbridge.

It is further mutually agreed that this contract shall be promptly submitted to the Secretary of the Treasury by said Burbridge for his approval, and that if it shall not be approved it shall be thereby terminated, and that if it shall be approved it shall nevertheless be at all times subject to termination by the Secretary of the Treasury, or by his direction; any termination, however, to be subject
233 to the completion of transactions connected under it, in accordance with the provisions thereof, previous to receipt by said Tweed of notice of such termination.

In witness whereof, we have hereunto set our hands this twenty-third day of January, A. D. 1866.

(Signed) J. P. TWEED.
(Signed) O. H. BURBRIDGE,
Sup. Sp'l Ag't 3d Ag'y, T. D.

Hearing and order on rule.

Extract from the minutes of Saturday, April 28th 1866:

JOHN P. TWEED
vs. } No. 3,872.
BENJ. F. FLANDERS.

The rule taken by plaintiff on the 26th instant, and continued from yesterday, came up.

Sullivan, Billings & Hughes for plaintiff in rule.

Durant and Hornor for B. F. Flanders.

Major Gen'l Canby in person, assisted by Anderson Miller, esq.; Major Jackson not present, ordered to be attached.

234 When after hearing the plaadings, the answers of Major General Canby, and B. F. Flanders, the evidence and argument of counsel for reasons orally assigned, his honor withheld his decision and directed that the court stand adjourned till Saturday, 5th May, 1866, at 11 p. m.

Attachment.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to attach and hold in your custody the body of Major A. M. Jackson, so that he be and appear forthwith at a Circuit Court of the United States for the said eastern district of Louisiana, holden in the city of New Orleans, this day of 186 , to show cause (if any he have or can) why he should
235 not be fined, according to law, for non-attendance as defendant in rule in said court on this 28th day of April, 1866.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 28th day of April, A. D. 1866, and 90th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received April 28th, 1866, and forthwith proceeded to the office of Major A. M. Jackson, provost marshal of parish of Orleans, corner of Baronne and Union streets, and there presented this writ to the clerk in said office, and demanded the whereabouts of said Maj. Jackson, when said clerk informed that he knew not where he was at that time, he having left the office some time previous, and with
236 said clerk I left word for Maj. Jackson to appear in court soon as he returned.

Writ returned not executed for the reasons above—not found.

New Orleans, April 28th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

United States Circuit Court.

Order in chambers for subpœna duces tecum.—Filed May 5th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

On motion of Sullivan, Billings & Hughes, counsel for plaintiff, and on suggesting to the court that defendant has in his possession certain papers that are important to the plaintiff's case to be heard on Saturday, May 5th, 1866:

It is ordered that defendant, B. F. Flanders produce in court, at 11 o'clock, p. m., of Saturday, May 5th, 1866, all the papers filed

with him by plaintiff, and particularly the bill of sales to
237 plaintiff of four hundred and ninty-five (495) bales of cotton.
(Signed) E. H. DUBELL, *Judge.*

In chambers, May 5th, 1866.

Circuit Court of the United States for the judicial circuit and eastern district of Louisiana.

Subpœna duces tecum.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3,872.

The President of the United States to Benjamin F. Flanders:

You are hereby commanded to be and appear, and to bring with you all the papers filed with you by John P. Tweed, plaintiff herein, and particularly the bills of sale to plaintiff of 495 bales of cotton, before the Circuit Court of the United States for the 6th circuit in and for the said district to be holden at the city of New Orleans, on this 5th day of May, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried be-
238 tween John P. Tweed, plaintiff, and B. F. Flanders, defendant, at 11 o'clock, p. m., and herein fail not, under the penalty of two hundred and fifty dollars.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of United States, at the city of New Orleans, this 5th day day of May, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

(Signed) CHAS. CLAIBORNE, *Clerk,*
By F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received May 5th, 1866, and on the same day, month and year, served a copy of the within subpœna duces tecum on B. F. Flanders, the defendant named herein, personally, at his office, corner of Levee and Crossman streets, in this city.

New Orleans, May 5th, 1866.

(Signed) G. HOLLANDER,
D'y U. S. Marshal.

239 *Order.—Rule dismissed.*

Extract from the minutes of Saturday, May 5th, 1866:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

For reasons orally assigned, and considering that the defendants in the rule have removed the obstructions and surrendered the cotton to the U. S. marshal, it is ordered that the rule be dismissed.

U. S. Circuit Court.

Answer of B. F. Flanders.—Filed May 7th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS, DEPT'Y GEN'L AG'T U. S. D. T. } No. 3,872.

Now comes the defendant by his attorneys, and for answer to the plaintiff's petition in this case pleads a general denial of all and singular the facts and allegations therein contained.

Wherefore he prays for judgment in his favor with costs
240 and all general relief.

(Signed) DURANT & HORNER, *For Deft.*

Extract from the minutes of Monday, May 7th, 1866.—*On motion and order to bond.*

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

On motion of Sullivan, Billings & Hughes, attorneys for plaintiff, ordered that said plaintiff have leave to bond the 372, bales cotton sequestered herein upon giving security required by law, and that the property be appraised by H. G. Heartt and R. L. Robertson.

United States Circuit Court, eastern district of Louisiana.

Notice to appraisers.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

To H. G. Heartt & R. L. Robertson:

241 Take notice that you have been this day appointed appraisers for the purpose of ascertaining the value of the property libeled in this case; and you are to file the report of your appraisement within the shortest possible delay.

By order of court.

(Signed) F. B. VINOT, *D'y Cl'k.*

New Orleans, May 8th, 1866.

Marshal's return.

Received May 8th, 1866, and same day month and year, served a copy of the within notice on the appraisers named herein in the hands of R. L. Robertson personally, he being one of said appraisers.

New Orleans, May 10th, 1866.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Affidavit to take testimony de benne esse.—Filed May 7th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 1.

242 SAME
vs.
SAME. } No. 2.

PARISH OF ORLEANS, *State of Louisiana, ss*:

John P. Tweed, the plaintiff in the above-entitled action being duly sworn, says that Stephen Burbridge is a material witness to establish his case therein, and that he is about to depart from this State so that he cannot, as deponent fears and believes, have the benefit of his testimony unless the same be taken de benne esse.

(Signed) J. P. TWEED.

Sworn and subscribed before me this 8th day of May, A. D. 1866.

(Signed) F. B. VINOT, *D'y Clerk.*

Motion and order to take testimony.

Extract from the minutes of Tuesday, May 8th, 1866:

J. P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. AG'T, &C. } No. 3,857.

243 SAME
vs.
SAME. } No. 3,872.

On motion of Sullivan, Billings & Hughes, attorneys for plaintiff in said actions, and on filing affidavit, it is ordered that the testimony of Stephen Burbridge be taken before Chas. Claiborne, esq., U. S. commissioner, de benne esse, to be used upon the trial of said actions, and that the defendant be notified thereof, and that said testimony be taken on the 9th day of May, A. D. 1866, at the clerk's office, at 2 o'clock, p. m., and that a subpoena issue commanding said witness to appear at said time and place.

Circuit Court of the United States for the 6th circuit and eastern district of Louisiana.

Notice by U. S. commissioner to take testimony, issued May 8th, 1866.—Notice to defendant.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

Please to take notice that Stephen Burbridge, a witness whose testimony is necessary in these causes, and who is about to depart from this State, will be examined (de benne esse) on the part of the plaintiff in the above-entitled causes, before me, (a commissioner duly appointed by the Circuit Court of the United States, for the eastern district of Louisiana, under and by virtue of the acts of Congress in such cases made and provided) at my office at the custom-house, in the city of New Orleans, on the 9th day of May, instant, at 2 o'clock in the afternoon of that day, at which time and place you are hereby notified to be present, and put interrogatories if you shall
245 think fit.

Dated New Orleans, the 8th day of May, A. D. 1866.

Yours, etc.,

[SEAL.] (Signed) CHS. CLAIBORNE,
U. S. Commissioner.

Marshal's return on the foregoing notice.

Received May 8th, 1866, and same day, month and year, served a copy of the within notice on B. F. Flanders, esq., personally, at his office corner of Crossman and Levee street in this city.

New Orleans, May 9th, 1866.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Circuit Court of the United States for the 6th circuit and eastern district of Louisiana.

Notice to district attorney.

J. P. TWEED
vs.
B. F. FLANDERS, SUP. SPL. AG'T, &C. } No. 3,857.

246 J. P. TWEED
vs.
B. F. FLANDERS, SUP. SPL. AG'T, &C. } No. 3,872.

Please take notice that Stephen Burbridge, a witness whose testimony is necessary in these causes, and who is about to depart from this State, will be examined (de benne esse) on the part of the plain-

tiff in the above entitled causes before me, (a commissioner duly appointed by the Circuit Court of the United States for the eastern district of Louisiana, under and by virtue of the act of Congress in such cases made and provided, at my office, at the custom-house in the city of New Orleans, on the 9th day of May, instant, at 2 o'clock in the afternoon of that day, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated New Orleans, the 8th day of May, A. D. 1866.

Yours, etc.

(Signed) CHS. CLAIBORNE, *U. S. Commissioner.*

247 *Marshal's return on the foregoing notice.*

Received May 8th, 1866, and same day, month and year, served a copy of the within notice, on John K. Goodloe, esq., the United States district attorney, personally, at his office in the custom-house building in this city.

(Signed) M. EGAN, *D'y U. S. Marshal.*

New Orleans, May 9th, 1866.

Testimony of S. Burbridge.—Filed May 9th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857, No. 3,872—2 cases.

General S. G. Burbridge, sworn for plaintiff, says: In the month of March, 1866, I was sub-assistant supervising agent of the Treasury Department, and was in charge of the cotton bureau at Shreveport, and for the whole Red river region. Prior to Mr. Tweed's
248 purchasing the cotton, I had a notice of the fact that the contract was annulled. The intelligence first reached me by a letter from Mr. Mellon to Mr. Tweed, next by a telegraphic dispatch from O. H. Burbridge, supervising agent of the Treasury Department at New Orleans. This letter from Mr. Mellon to Mr. Tweed was shown to me by the latter, the purport of the dispatch I communicated to Mr. Tweed. All this, as well as I recollect, occurred before the purchase of cotton by Tweed. Mr. Tweed consulted me before his purchase as to the character of the cotton. I told him there was no evidence in my possession against the cotton at that time. I advised him that it was, as near as I could find out, private cotton. Mr. Tweed stated to me at that time that he could not afford to buy the cotton at that price under the contract, and that he was proposing buying it outside of the contract. I made no objec-
249 tion to it, as I thought it was right and proper for him to do so; my judgment was based upon the character of the cotton, being in my judgment private cotton, and not included in the contract.

Cross-examined.

A written notice was given to Mr. Tweed of the annullment of the contract after the purchase of the cotton.

(Signed) S. G. BURBRIDGE.

Sworn to and subscribed before me this 9th day of May, 1866.

(Signed) CHS. CLAIBORNE,
U. S. Commissioner.

Appraiser's report.—Filed May 15th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

Appraiser's report.

OFFICE OF THE UNITED STATES APPRAISERS,
New Orleans, May 14th, 1866.

We the undersigned, appraisers of this honorable court,
250 duly appointed and sworn, have the honor to report that we have this day carefully examined the cargo of three hundred and seventy-two bales of cotton, and are of opinion that the actual market value or wholesale prices of the said merchandise are this day, and we do therefore appraise the same, as follows:

Marks.—Planter's and shipping mark.	No.	Description of mds'e or vessel.	Value.
		In Szymanski's press:	
W. C.	9	Bales good ord'y, 4,239 lbs., 30c	1,279 70
L. P.	2	" " 942 " 30	282 60
M. F.	1	" " 471 " 30	141 30
W. B. Aiken.	137	" " and ordinary 64,527 lbs., 29c	18,712 83
R. F.	19	Bales low ordinary and ordinary, 8, 949 lbs., 27c	2,416 23
[B.]	22	Bales low ordinary, repacked and damaged.	
W. A. B.	32	54 bales low ordinary, repacked and damaged heated, 25,434 lbs., 25c	6,358 50
	222	Average weights, 471 lbs. each.	
		In shipper's press:	
W. B. Aikin.	115	Bales good ord'y, 54,740 lbs., 30c	16,422 00
	35	" repacked with damaged, 16,660 lbs., 25c	4,165 00
In all	372	Bales as per suit, No. 3,872. Average weights, 476 lbs. each.	$49,770 16

251 (Signed) H. G. HEARTT,
(Signed) RICH'D L. ROBERTSON,
U. S. Appraisers, New Orleans.

To the Hon. E. H. Durell, Judge U. S. District Court for the eastern district of Louisiana, New Orleans.

[Copy.]

I hereby certify the following to be weights of 10 bales of cotton, to ascertain the average:

506
454
456
516
467
460
510
498
448
400

4,715 lbs.

Average 471 lbs.
(Signed) H. BAYHN, *Weigher.*

A true copy from the original in my office.
(Signed) H. G. HEARTT,
U. S. Appraisers, &c. &c.

United States Circuit Court.

Appraisers' bill.—Filed May 15th, 1866.

252 J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

APPRAISERS' DEPARTMENT,
New Orleans, May 15th, 1866.

To Appraisers' Office Dr.

1866. May 15. For examination, appraisement and ascertaining market value of property and merchandise, as per appraisement rendered, $49,770 16 at 1 p. c..... 497 70
Weighing 10 bales for average, at 25c. 2 50
Turning in and out of cotton, press charges, 372 bales 2 p. c. 9 30

$509 50

Order to release cotton.

Extract from the minutes of Tuesday, May 15th, 1866:

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, DEP'T'Y GEN'L AGENT of the U. S. Treasury Department. } No. 3,872.

253 The appraisers having filed their report, showing the value of the 372 bales cotton sequestered herein to be $49,770 16c., the plaintiff and his sureties, Sam. Smith, Josh. Oglesby, and A. D. Grieff, appeared in court and executed a bond in that amount, and the said sureties having satisfactorily proven their solvency, and the bond being acknowledged in open court, it was ordered that the cotton be released and delivered to the plaintiff.

Release bond.—Filed May 15th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

Know all men by these presents, that we, John P. Tweed as principal, and Joseph H. Oglesby, Samuel Smith and A. D. Grieff, as sureties, the said J. H. Oglesby $25,000, A. D. Grieff $5,000,
254 Sam. Smith $20,000, as sureties, are held unto Cuthbert Bullitt, United States marshal for the eastern district of Louisiana, in the sum of forty-nine thousand seven hundred and seventy 16-100 dollars, for the payment whereof to the said Cuthbert Bullitt, U. S. marshal, his heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors and administrators, respectively, by these presents, as witness our respective names hereunto affixed, at New Orleans, this 15th day of May, A. D. 1866.

Whereas, in and by virtue of a writ of sequestration issued out of the honorable, the United States Circuit Court for the sixth circuit and eastern district of Louisiana, holding sessions in the city of New Orleans, at the suit of John P. Tweed vs. B. F. Flanders, deputy general agent of the U. S. Treasury Department, and numbered 3,872 on the docket of said court, and which suit is now pend-
255 ing therein, the following described property, to wit: three hundred and seventy-two bales of cotton, have been seized, taken into custody of the said U. S. marshal and detained according to law, but the same has been released and delivered to the said John P. Tweed, upon the appearance of the said Tweed in the said suit, and delivering to the said Cuthbert Bullitt, U. S. marshal, the present obligation, which has been executed in pursuance of an order of said court issued on the 7th day of May, 1866.

The condition of which is such that if the said plaintiff, John P.

Tweed, shall not send the above-described property out of the jurisdiction of the court, that he will not make an improper use of it, and that he will faithfully present the same in case he should be decreed to restore the same to the said U. S. marshal, or shall satisfy
256 such judgment as may be rendered in the suit pending as above-mentioned, then this obligation to be void, or else to remain in full force.

(Signed) J. P. TWEED.
" JOS. H. OGLESBY.
" SAM. SMITH.
" A. D. GRIEFF.

[25-c. int. rev. stamp affixed and cancelled.]

Writ of release.—Issued 15th May. 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3872.

UNITED STATES CIRCUIT COURT,
Eastern District of Louisiana, ss:
CLERK'S OFFICE, *New Orleans.*

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Whereas John P. Tweed, claimant of 372 bales cotton sequestered herein, hath obtained leave of court to bond the same, and
257 which said order is now of record in this office:

You are hereby authorized to release the said 372 bales cotton from seizure, and them to restore to the possession and custody of said claimant, he having given bond conditioned as required by law, and otherwise complying with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme Court of the U. S., at New Orleans, this 15th day of May, A. D. 1866, and the 90th year of the independence of the United States.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received May 16th, 1866, and on the same day, month and year, in obedience to this order, released unto Jno. P. Tweed three hundred and seventy-two bales (372) of cotton of various marks,
258 by giving orders on the shipper's press and on the Szymanski's press, and went there in person and ordered, in the first-named press 150 bales and in the last-named press 222 bales, to be turned over unto said Tweed, the plaintiff named herein, and it was so done.

New Orleans, May 16th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Rule on appraisers.

Extract from the minutes of Tuesday, May 22d, 1866:

JOHN P. TWEED
vs. } No. 3,872.
B. F. FLANDERS.

On motion of Sullivan, Billings and Hughes, attorneys for the plaintiff, and upon suggesting to the court that the appraiser's fees are excessive, the same having been paid into the registry of this court under protest, it is ordered that the appraisers herein
259 show cause on the 29th day of May, 1866, at 11 a. m., why their fees as charged should not be reduced, and why such order should not be made in the premises as may be just.

Marshal's return.

Received May 23d, 1866, and on the same day, month and year served a copy of the within rule on the appraisers named herein personally, each at their respective offices.

New Orleans, May 26th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

U. S. Circuit Court 6th circuit.

Affidavit to take testimony.—Filed May 28th, 1866.

JOHN P. TWEED
vs. } No. 3,872.
BENJ. F. FLANDERS.

John P. Tweed, being duly sworn, deposes and says that he is the plaintiff herein; that Major General E. R. S. Canby is a mate-
260 rial witness for the plaintiff herein, and that he is informed and believes that said Canby is about to depart from the jurisdiction of this honorable court.

(Signed) J. P. TWEED.

Sworn to before me this 28th May, 1868.

(Signed) F. B. VINOT, *D'y Cl'k.*

[5-c. int. rev. stamp affixed and cancelled.]

U. S. Circuit Court, sixth circuit.

Order in chambers to take testimony.—Filed May 28th, 1866.

JOHN P. TWEED
vs. } No. 3,872.
BENJ. F. FLANDERS.

Upon reading and filing the annexed affidavit, it is ordered that the testimony of Major General E. R. S. Canby be taken before

Charles Claiborne, esq., clerk of this court, on the 29th day of May, 1866, at 10 o'clock in the forenoon, and that defendant be notified.

(Signed) E. H. DURELL, *Judge.*

261 United States Circuit Court eastern district of Louisiana.

Notice to take testimony.—Issued 27th May, 1836.

JOHN P. TWEED
vs.
B. F. FLANDERS, DEP. GEN'L Agt., &c. } No. 3872.

To B. F. Flanders, Esq.:

You are hereby notified that testimony will be taken in the above entitled cause on Tuesday, the 29th day of May, 1866, at the clerk's office of this court at 10 o'clock a. m., on behalf of plaintiff.

New Orleans, May 28th, 1866.

[SEAL.] (Signed) B. F. VINOT,
D'y Clerk.

Marshal's return.

Received May 28th, 1866, and on the same day, month, and year served a copy of the within notice on B. F. Flanders, esq., personally, at his office, corner of Crossman and Levee streets, in this city.

New Orleans, May 28th, 1866.

(Signed) M. EAGAN,
D'y U. S. Marshal.

262 *Testimony of General Canby.—Filed May 29th, 1866.*

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3,872.

Testimony in behalf of plaintiff taken in presence of Sullivan, Billings and Hughes, the district attorney, and Durant and Horner.

Major General E. R. S. Canby being asked at whose request and instance did you take possession of the ¾ths of the 495 bales cotton sequestered in this case.

"The district attorney objects to the question, on the ground that it has no bearing whatever on the issue in the case; that it does not tend to show whether Tweed is lawfully entitled to the possession of the cotton, nor does it tend to prove any title to it."

Answers: At the request of the Secretary of the Treasury, at my own instance, from the knowledge I had of the condition and
263 statics of this cotton, and at the request of Mr. Flanders, the deputy general agent of the Treasury. The order for the seizure was issued the same day that the request was made by Mr. Flanders, and on account of some mistake in the provost marshal's office, the actual seizure did not take place until the next day.

Cross-examined.

I heard of Mr. Tweed as having this contract; had no personal acquaintance with him before. I mean this contract with the Treasury Department of the United States. My object in taking possession of this cotton was to protect the interest of the United States.

Re-examined:

Previous to the request of Mr. Flanders I had knowledge of the character of the cotton, and that the United States had an interest therein.

Being asked, Did not the representations of Mr. Flanders con-
264 vey this idea to you, that the United States were interested in the ¾ in the cotton seized.

(Objected to on the ground of incompentency and irrelevancy.)

Says: Certainly they did,

(Signed) ED. R. S. CANBY, *M. Gen'l.*

Jurat waived by counsel.

Rule.—Answer of appraisers' to rule.—Filed May 28th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872, No. 3,857.

The defendants, H. G. Heartt and Captain R. L. Robertson, appraisers to this honorable court, appear personally to answer for the plea of excessive charges, and state: That on the reception of the order to examine and appraise 372 bales cotton in two presses, in Szymanski's press in the 3d district and shippers' in the first district, that they repaired with their brokers, classers, cutters, and clerks
265 to Skmanski's press to have turned out 222 bales as per appraisement hereto annexed, and proceeded to their labors, when a violent rain storm came up. After examining part, and fearing damage desisted. The next day, a storm brewing, did not consider it safe, the next day rolled out assorted samples, (marked papers,) classed, and cotton valued according to market price; the next day proceeded to shippers' press and went through similar process, 150 bales cotton rolled out, assorted, sampled, (marked papers,) classed, and cotton valued according to market price, making 495 bales.

This department, appraisers' pay, office-rent, their clerk hire, brokers, blanks, stationary, &c., &c., themselves; it is no charge upon this court or the United States. The customary charge by all respectable cotton factors in New Orleans for the same is 2½ per cent. commission, and the owner of the cotton pay all charges, as per annexed account No. 1 sales submitted, which was pre-
266 vious to the war, since which everything has advanced to gold standard, this department's rent has been doubled, and clerks' hire advanced. We admit, had the advice of the learned counsel, No. 3,871, Mollicocx & Bell vs. Flanders, been taken a few

days since, when the party as the learned counsel contended, and was so anxious to bond, for fear other parties, to use his expressions, "might jump on it," he said, to save time, "'tis unnecessary to go and see it;" put it down at $100 per bale, and render appraisement unsight, unseen; but as long as we hold the responsible situation representing this honorable court, and conscious of the faithful performance of our duty, other parties would have ruled us into court to know if we examined critically the cotton, and our answer under oath would be, No—the learned judge in his duty would exclaim, "Henceforth be no officers of mine." In the course of the examination at Skimanski's press I discovered the cotton was so
267 heated you could not put your hand inside the bale, and t'was hot enough to remove the skin from your hand. I saw Mr. Tweed and informed him that spontaneous combustion would ensue and the press burned up; he thanked me. I gave him the advice of one experienced merchant to another, not as an appraiser. I have not sent him in any bill yet for professional advice as a merchant, nor shall I. This department has to correct many errors before they can act; cotton presses are shut up on us after travelling all over the town, and cab hire $2 an hour, until the attorneys get their papers proper, when we can proceed with authority and demand entrance as officers of this court. Our department is perfectly systematized, and conducted correctly, neither turning to the right or the left, showing favor to none, comporting to the high dig-
268 nity of his honor and this court. All of which is respectfully submitted by

New Orleans, May 29th, 1866.

(Signed) H. G. HEARTT,
RICH'D L. ROBERTSON,
U. S. Appraisers to U S. Court.

The appraisers are liable, or it may be so construed, that should they put out cotton in the rain, whereby it may be damaged, and they are responsible equally as a cotton factor, as [as] there doubtless will be a suit for damages against B. F. Flanders for detention, difference in price, &c. That in consequence of the strict performance of their duty, the appraisers be allowed the same compensation as cotton factors; say 2½ per cent on valuation or sale.

Hearing and submission of rule.

Extract from the minutes of Tuesday May 29th, 1866.

JNO. P. TWEED *vs.* B. F. FLANDERS. } No. 3,872.

The rule taken on the 22d instant came up for trial, Sulli-
269 van, Billings, and Hughes for plaintiff in rule, H. G. Heartt, in propria persona, when after hearing the parties the court took time to advise.

Order on rule.

Extract from the minutes of Wednesday, May 30th, 1866:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

Ordered, that the fees of the appraisers be taxed at three-fourths of one per cent. on the amount reported by them as the value of the property.

Order.—Cause fixed for trial.

Extract from the minutes of Tuesday, June 5th, 1866:

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

Upon suggesting to the court that the parties consent, it is ordered, on motion of Sullivan, Billings & Hughes, that this case be
270 set for trial Saturday, 9th instant, and that due notice be given to defendant's counsel.

Marshal's return.

Received June 6, 1866, and same day, month and year served a copy of the within order on Durant & Hornor, esqs., attorneys for defendant in the within-named suit, by leaving said document in the hands of T. J. Durant, esq., one of said firm, at their office, No. 18 Royal street, in this city.

New Orleans, June 6th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Order.—Cause continued.

Extract from the minutes of Saturday, June 9th, 1866:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

On motion of Sullivan, Billings & Hughes, of counsel for plaintiff, and in the presence of T. J. Durant, esq., attorney for the
271 defendant, ordered, that this cause be continued until Monday, 11th instant, at 11 a. m.

Final judgment from judgment docket.—April term.

NEW ORLEANS, *Monday, June 11th*, 1866.

Court met pursuant to adjournment. Present: Hon. E. H. Durell, district judge.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

This cause came up for trial, Sullivan, Billings & Hughes, for plaintiff, J. J Durant, esq., for defendant; when, after hearing the pleadings and the admission on the part of the government, is is ordered, adjudged and decreed that there be judgment recognizing the plaintiff, John P. Tweed, as the lawful owner of the 372 bales of cotton sequestered in this case.

Judgment rendered June 11th, 1866.

Judgment signed June 15th, 1866.

(Signed) E. H. DURELL, *Judge.*

272 Circuit Court of the United States for the district of Louisiana.

Judge's certificate of costs.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

In pursuance of the 8th section of the act of Congress approved July 28th, 1866, extending the provisions of the 2nd, 3d, and 4th sections of the act of March 2nd, 1833, and of the 12th section of the act of March 3d, 1863, to cases arising against any officer of the United States, by reason of any act done under authority or color of the act of March 12th, 1863, or the act of July 2d, 1864: Provided, that such acts done, or proceedings had under the two last acts aforesaid, or under color thereof, shall have been done and had under the authority or by the direction of the executive government of the United States.

273 The undersigned certifies in this suit, wherein, on the 15th day of June, 1866, the plaintiff, by the final judgment of this court, recovered the possession of three hundred and seventy-two bales of cotton with his costs of suit, which are taxed at the sum of six hundred and sixty-five and 28-100 dollars; that defendant acted under the directions of the Secretary of the Treasury.

(Signed) E. H. DURELL, *Judge.*

274 Circuit Court of the United States, fifth circuit and district of Louisiana.

UNITED STATES OF AMERICA, *ss*:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the Circuit Court of the United States, for fifth circuit and district of Louisiana, do hereby certify, that the foregoing 273 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of John P. Tweed vs. B. F. Flanders, No. 3,899 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3d day of October, A. D. 1868.

[SEAL.] D. URBAN, *Clerk*.

[5-cent stamp.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify, that Dominick Urban, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 3d day of October, A. D. 1868.

E. H. DURELL, *Judge*.

275 UNITED STATES OF AMERICA, *ss*:

The President of the United States, to the honorable the judges of the Circuit Court of the United States in and for the fifth circuit, and holdings sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit court, before you or one of you, between John P. Tweed, plaintiff, and Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 12th of March, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for district of Louisiana.

Endorsed: United States Circuit Court, No. 3,899. John P. Tweed vs. B. F. Flanders. Writ of error. Filed March 12th, 1868. F. B. Vinot, d'y cl'k.

276 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to John P. Tweed, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department is plaintiff in error, and you are defendant, to show cause if any there be, why judgment rendered against said plaintiff as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this 13th day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

E. H. DURELL, *Judge.*

Endorsed: United States Circuit Court. No. 3,899. John P. Tweed vs. B. F. Flanders. Citation in error.

Marshal's return.

Received Mar. 13, 1868, by the U. S. Marshal, and on day of M'ch served a copy of within citation for Jno. P. Tweed, named herein, on Sullivan, Billings and Hughes, his atty's, in the hands of E. C. Billings, a member of said firm, personally at office, 82 Custom House street, in this city.

S. W. REED, *D'y U. S. Marshal.*

New Orleans, M'ch 14, '63.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

BENJ. F. FLANDERS, Deputy Gen'l Agent of the United States Treasury Department, *Plaintiff in Error*,
vs.
JOHN P. TWEED.
No. 109.

In error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This was an action brought by the defendant in error against the plaintiff in error, in the circuit court of the United States for the district of Louisiana, for damages for the alleged unlawful detention by the latter, in the city of New Orleans, of 495 bales of cotton.

The plaintiff below set forth in his petition that, on or about the 6th of March, 1866, he was the owner of said cotton, which was then in said city; that the defendant below at that time unlawfully seized and took the cotton into his custody, and detained it until the 15th of May, 1866, when the plaintiff recovered possession of the same by virtue of two writs of sequestration; that

during the period the cotton was thus withheld by the defendant it declined in value to a considerable amount; that, in consequence of the detention, the plaintiff was compelled to pay out large amounts for insurance, storage, counsel fees, &c.; and that the defendant did other acts whereby the cotton was diminished in value; for all which the plaintiff prayed judgment against the defendant in the sum of $39,360, besides costs of suit. (See printed record, pp. 1 and 2.)

A citation was issued and duly served; but the defendant having failed to answer, a judgment by default was taken, which, however, was subsequently set aside, and an answer filed by him, containing a general denial of plaintiff's allegations. (*Ibid.*, pp. 2, 15.)

In the course of the hearing of the cause, which seems, by consent of the parties, to have been tried by the court, the defendant submitted the following propositions: (*Ibid.* pp. 62, 63, 64.)

"1st. That if the cotton was seized by authorized agents of the Treasury Department, and was brought to New Orleans under their order, and with the consent of the plaintiff, to have the claim examined and decided by the supervising special agent, or any authorized agent of the Government, (as the defendant,) under the orders and instructions of the Secretary of the Treasury, under the provisions of the acts of Congress of the 12th March, 1863, and 2d July, 1864, and that the said Flanders acted without any fraud or malice in his investigation and decision, and conformed in his action to the acts of

Congress, and the instructions under the same of the Secretary of the Treasury, he is not liable in this suit.

"2d. That if the cotton was seized as captured, abandoned, or confiscable cotton, under the acts of Congress above mentioned, while in the possession and ownership of persons residing in Louisiana, and after seizure, and while in the custody of the United States, by its agents for examination and inquiry, the plaintiff purchased the right to the same while the subject was being inquired of, and there was no unreasonable or intentional delay in the inquiry and examination, the plaintiff is not entitled to recover.

"3d. That if the court shall find that the plaintiff was in the actual possession of the property, by himself or his consignees, under the seizure of the officers of the Treasury, and that the defendant exercised no control over it but to examine, on behalf of the United States, their title thereto up to the time of the seizure by General Canby of the cotton, and upon such examination surrendered such part as he considered and concluded was not liable to seizure, then the plaintiff cannot recover.

"4th. That if the court shall find that the cotton was under seizure at any time by an authorized agent of the Treasury Department, then, neither such agent nor the defendant was authorized at any time to release such seizure, except by the special order of the Secretary of the Treasury; and if the defendant acted faithfully, under and in obedience to such orders and special

instructions of said Secretary, then the plaintiff cannot recover.

"5th. That if the defendant was acting in the capacity of a referee, to examine and report or express and pass his judgment upon the question whether the cotton was of right the property of the Government or the property of other persons, or whether there was or was not lawful cause for its detention by the Treasury Department; and if the plaintiff consented to such reference or adjudication; and further, if the court shall find that he confined his action within the power conferred on him, and acted without malice and in good faith, that then the reference and employment was of a judicial character, and the plaintiff is not entitled to recover.

"6th. That if the court shall find that the cotton was under seizure by a seizing officer of the Government, exercising his authority under lawful appointment of the Treasury Department, that then the property was irrepleviable by the plaintiff, and he cannot recover in this suit.

"7th. That if the property was in law repleviable, and if the court shall find that Flanders was not a trespasser in its seizure, and that the plaintiff himself joined in submitting it for his adjudication or examination into the respective claims of the plaintiff and the United States or others, that then the plaintiff was at liberty, at any time after its arrival in New Orleans, to assert his rights; and that hence the defendant is not

liable for any damage growing out of the deterioration of the value of the property from the time of its arrival in New Orleans till the time of its delivery to the plaintiff.

"8th. That if the court find that the defendant was acting under any orders of the President of the United States, or under his authority, made at any time during the existence of the late rebellion, or under color of any law of Congress, such fact is a defence under the act of Congress, and the plaintiff cannot recover."

But the court gave judgment for the plaintiff for $36,976 33, with 5 per cent. interest thereon, from judicial demand till paid, and costs of suit. (*Ibid.*, pp. 65, 67.)

Defendant subsequently obtained a rule upon the plaintiff to show cause why a new trial should not be granted; but the rule was discharged, and a new trial refused. (*Ibid.*, pp. 65, 67.)

Defendant then sued out a writ of error, which brings the case before this court.

The following is a statement of the facts as found by the court: (*Ibid.*, pp. 69, 70, 71.)

"Certain agents of the Treasury Department of the United States, before the 1st of March, 1866, in various localities in the vicinity of Shreveport, on Red river, Louisiana, seized 495 bales of cotton, on the claim or pretence that it was the property of the United States by capture, or as having been sold to the Confederate States Government, or subject to forfeiture under the

acts of Congress, and forwarded it to S. G. Burbridge, the assistant supervising special agent of the Treasury Department at Shreveport. Whilst these cottons were thus under seizure and in custody of the said S. G. Burbridge, and early in March, 1866, the plaintiff, Tweed, being informed by him that he had no sufficient evidence in his possession on which to condemn the property, and that he, Tweed, might buy it, purchased it from the several claimants from whom it had been seized, at a price its then market value in Shreveport. He shipped to his consignees, Scott, Cage & Co., of New Orleans, 295 bales, and to Weed & Co. 200 bales, on bills of lading marked in the record, numbered 8, 9, 10, 11, 12, and 13, subject to the order or adjudication, and insured in the open policy of O. H. Burbridge, agent, &c. The cottons were received and held in store by the consignees, respectively, with notice to refrain from disposing of them until they had been adjudicated by the order of the Secretary of the Treasury.

"Flanders was appointed deputy general agent of the Treasury Department on the 10th of March, 1866, and was ordered by the Secretary to examine into and report on the claims of the United States and the rights of the several claimants to the cottons received and held by the supervising special agent at New Orleans. In the discharge of this order he entered upon the inquiry in respect of the cottons claimed by Tweed.

"On the 23d of January, 1866, Tweed entered into

a contract with the Treasury Department, (in the record marked A,) by which he was permitted to purchase a description of cottons which, by law, were the property of the United States, on conditions that he should receive three-fourths of them, and the Government one-fourth. This contract was revoked, by the order of the Secretary, on the 23d day of February, 1866. Flanders, asserting that these cottons were purchased under the contract, claimed to hold one-fourth of the cottons for the United States, which was resisted by Tweed, who denied the right of the United States to any portion of the cottons, and the facts were laid by Mr. Flanders before the Secretary for his decision, who replied by letter, dated April 2, 1866, (in the record marked No. 14.) Flanders thereupon surrendered, on the 20th of April, three-fourths of the cottons, reserving in store the remaining one-fourth. On the 21st day of April, 1866, Tweed prosecuted out of the circuit court of the United States a writ of sequestration, numbered 3,857 on the docket of said court, upon which the one-fourth of the cotton was taken possession of by the United States marshal, and was bonded and delivered to the plaintiff on the 8th day of May, 1866.

"That on the 24th day of April, 1866, Major General Canby, then commanding the Department of Louisiana, at the request of Flanders, seized the three-fourths share of the cottons which had been delivered by Flanders to Tweed, and placed the same under a military guard. That on the 25th day of April, 1866,

a writ of sequestration was sued out of this court by the plaintiff to recover possession of these three-fourths, which, on the 3d day of May, 1866, and so soon as the guard was withdrawn by General Canby, was also taken possession of by the United States marshal, and was bonded and delivered to the plaintiff on the 15th day of May, 1866.

"The records in the two sequestration suits, numbered 3,857 and 3,872 on the docket of this court, in each of which plaintiff recovered judgment affirming his title and claim to the cotton, were introduced in evidence, and form part of this record. It was proved that the cottons, during the period of detention, depreciated in market price or value — cents per pound; that plaintiff paid out for storage and insurance $1,160, and for counsel fees, $6,000; that Flanders acted under and in obedience to the directions and special orders of the Secretary of the Treasury, and was admitted by the plaintiff to have acted in good faith and without malice."

ARGUMENT.

I. The ground of the action below was the alleged unlawful seizure and detention of the plaintiff's cotton by the defendant.

The matter of fact found by the court, as respects the seizure and detention, was in substance this: That certain cotton had been seized by Treasury agents, in the yicinity of Shreveport, La., and sent to the agent

of the Treasury at that place; that while it was in the custody of the latter the plaintiff purchased it from parties claiming to be the owners thereof; that the property was afterwards shipped to the consignees of the plaintiff at New Orleans, subject to the order or adjudication of the Treasury agent there, and was also insured in behalf of the Government; that the consignees received it, with notice not to dispose of the same until after it had been adjudicated under the instructions of the Secretary of the Treasury; that subsequently, in pursuance of instructions received from the Secretary of the Treasury, the defendant, who was then deputy general agent of the Treasury at New Orleans, surrendered three-fourths of the cotton to the plaintiff, reserving in store the remaining one-fourth; that the plaintiff on the following day sequestered the one-fourth thus reserved, whereupon the three-fourths previously surrendered to him were seized by the military authorities, at the defendant's request, and held in military custody; and that the plaintiff then sued out a writ of sequestration against the three-fourths, whereby he finally recovered possession of the same.

On this state of facts, the judgment of the court below was erroneous.

In the first place, there was no unlawful *seizure* of the property by the defendant. It had been shipped to the consignees of the plaintiff, subject to the order of the defendant, (he being the Treasury agent in charge at

the place of consignment during the period referred to,) for the purpose of "adjudication," under the instructions of the Secretary of the Treasury. To this arrangement the plaintiff himself must have been a party, since his own agents, to whom the cotton was consigned, were notified to not dispose of the same until after adjudication. The defendant acquired no other possession of the property than such as was thus conferred upon him, and this he lawfully acquired. There was no seizure of any kind subsequent to the receipt of the property by the consignees, or even subsequent to the purchase thereof by the plaintiff, except that which was made by the military authorities of a portion of the cotton. But if that seizure was unlawful, the defendant certainly incurred no liability therefor. It was not *his* act.

In the next place, there was no unlawful *detention* of the property by the defendant. The cotton had been stored, by the presumed consent of the plaintiff, subject to the order of the defendant, for the purpose of adjudication. The adjudication afterwards took place, and, as the result of which, three-fourths of the cotton were turned over to the plaintiff; but *non constat* that in the meantime the latter had made any demand upon the defendant for the property. Thus far, then, the detention could not have been unlawful. And the fact that the remaining one-fourth was afterwards sequestered by the plaintiff is not of itself evidence that even *that* was unlawfully detained by the defendant for a moment. Sequestration being merely a conservative measure, the

issuing of the writ does not necessarily assume that the defendant unlawfully withholds property belonging to the plaintiff. Thus it may be issued for the protection of a vendor, or a creditor, in cases where the ground of the application is not the detention of property, but the insolvency of the defendant, or the apprehended removal of the property by him out of the State. (See Milne *vs.* Amelung, 2 Martin, 212; Neilson *vs.* Pool, 17 Louisiana, 209; Gardner *vs.* Shipley, 4 La. An., 184.) With regard to such portion of the property as was seized and held in custody by the military authorities, the detention of that, so caused, cannot properly be attributed to any act of the defendant.

II. The plaintiff in error asks that his brief in No. 108 of this term, between the same parties, may be considered as the further argument in this case.

III. The statement of damages by plaintiff is found on p. 64 of printed transcript, and this amount was

adjudged by the court, p. 65. One item is attorneys fees in two suits, $6,000.

It was error to include this item in the judgment.

Day *vs.* Woodworth, 13 How., 363.

Teese *vs.* Huntington, 23 How., 2.

The same is true of the items for insurance and storage.

In case of an illegal detention of merchandise by a public officer, under a claim of right honestly believed to exist, if the merchandise is restored, the damages, in the absence of special circumstances, are the loss by the fall in the market value, if any, during the illegal detention of the merchandise, and interest on its value at and from the time the illegal detention began.

Conrad *vs.* Pacific Ins. Co., 6 Pet., 262.

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Supreme Court of the United States

DECEMBER TERM, 1869.

BENJAMIN F. FLANDERS,

Deputy General Agent, etc.

109 v.

JOHN P. TWEED.

Error to the Circuit Court of the United States for the District of Louisiana.

T. D. LINCOLN,
Of Counsel for Defendant in Error.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati, O.

Supreme Court of the United States,

DECEMBER TERM, 1869.

Benjamin F. Flanders,

Deputy General Agent, etc.

109 *v.*

John P. Tweed.

Error to the Circuit Court of the United States, for the District of Louisiana.

THIS was a suit brought by Mr. Tweed, a citizen of Ohio, against the defendant in error, Benjamin F. Flanders, a citizen of Louisiana.

It was an action to recover damages for the wrongful detention of 495 bales of cotton, the property of the plaintiff. The damages claimed, were: 1. The reduction in price of the cotton, while thus wrongfully held, $30,000. 2. Extra interest which the plaintiff below had been compelled to pay during that

time $160, and insurance $200. 3. Storage during that time to the amount of $1,000. 4. Counsel fees, clerk's and marshal's fees, which he was compelled to pay in obtaining pos session of the cotton by legal process, $7,000. 5. Loss on cotton in diminished weight from rebailing, and expenses thereof, $1,000. In all, making the sum of $39,360.

The case came on for hearing, and was submitted to the court upon the evidence, and the court found damages in the amount of $36,976.33, for which judgment was rendered. These damages were made up of the three following items: 1. Storage and insurance while the same was wrongfully detained, $1,160. 2. Deterioration in value of the cotton, while thus held, $29,816.33, and counsel fees paid in the prosecution of suits to obtain possession of the same, $6,000.

Precisely what questions are to be raised, or can be raised, in this record, does not appear. There was no demurrer overruled, no exceptions taken to the admission of evidence, or to charges given or refused, and there is no assignment of error found in the record. There was a series of instructions asked by the defendant's counsel, but it does not appear what was done with them. No exceptions were taken to the overruling of them, and it does not appear, except in the final judgment, that they were not followed. Nor does it appear in the record that they were finally insisted upon, or what action the court took in reference thereto. If they were overruled in the final judgment, there is no exception made to that.

There was a motion made for a new trial, in which sundry reasons are given why such new trial should be had. All these reasons except the first, and the ninth and last, relate to the amount of the damages merely, and as it does not appear that all the evidence is before the court, these questions can not be reviewed by this court; indeed, could not be raised in

this court, even if the whole evidence was found in the record. The finding is final in this court.

Parks v. *Turner*, 12 How. 43.
The United States v. *King et al.*, 7 How. 844.
Bond v. *Brown*, 12 How. 255, 256.

The other questions are to the effect, 1. That the defendant below was deputy agent of the Treasury Department, and was acting in a *quasi* judicial capacity.

2. That the judgment is contrary to the law and evidence. Record p. 64.

No exception is taken to the overruling of this motion.

Unless it affirmatively appears that the court had no jurisdiction, or that they could not under any circumstances have properly rendered the judgment which was rendered, there can be no reversal thereof.

This, I take it, must be found in the petition, and special finding, if found anywhere; and how any error is to be predicated on this statement or finding of facts, I do not see; for the reason that there are no exceptions thereto.

It was not claimed in this suit that the court had no jurisdiction. The answer admits that the defendant was deputy special agent of the Treasury Department, but it denies all the other facts set out in the petition. Record p. 15.

It is, in other words, a general issue, or general denial. A similar answer is filed by the District Attorney at a subsequent stage of the case. Record, pp. 48, 49.

This record is to be examined as other cases by writ of error, and upon the principles and rules of common law.

Parsons v. *Bedford*, 3 Pets. 445.
Jones v. *La Valette*, 5 Wall. 579.

The statement of facts is conclusive.

The United States v. *King et al.*, 7 How. 844.
Parks v. *Turner*, 12 How. 43.
Bond v. *Brown*, 12 How. 255, 256.

If there is any error which is now open for examination in this court, it must therefore appear from this statement of facts. I am not familiar with the practice in Louisiana cases, and can not say to what extent such error is now open for examination, there being no exceptions taken to this finding, and do not intend to waive any questions which Mr. Tweed might insist upon.

The statement of facts sets out that certain agents of the Treasury Department, before the first of March, 1866, seized the 495 bales of cotton on the claim or pretense that it was property of the United States by capture, or as having been sold to the Confederate Government, or subject to forfeiture; and forwarded it to S. G. Burbridge, Assistant Supervising Agent at Shreveport. While the said cotton was in his hands, under such seizure, Mr. Tweed being informed by the said Burbridge that he had no sufficient evidence to condemn it, and that he might buy it, purchased it of the owners for its full value, and forwarded it to his consignees in New Orleans, subject to the order or adjudication of O. H. Burbridge, a Treasury agent in New Orleans. The cotton was received by Tweed's consignees in New Orleans, who were notified by the Treasury agent to refrain from disposing of it until it could be adjudicated by the Secretary of the Treasury: that Flanders was appointed deputy general agent, and ordered to examine and report on the claims of the United States to this cotton: that Mr. Tweed entered into a contract with the agents of the Treasury Department on the 23rd day of Jan-

uary, 1866, by which he was permitted to purchase cotton of a certain description belonging to the United States, he receiving three-fourths thereof, and the Government one-fourth, and that this contract was annulled on the 23rd day of February, 1866: that Flanders asserted that the cotton was purchased under the contract, and claimed to hold one-fourth, which Tweed resisted: that Flanders submitted the matter to the Secretary of the Treasury, who authorized him by letter of April 2, 1866, if he saw fit, to distribute the cotton under the contract—three-fourths to Mr. Tweed, and retain one-fourth. Record, pp. 55–70: that thereupon, on the 20th of April, 1866, the defendant, Flanders, distributed three-fourths of said cotton to Mr. Tweed, and retained one-fourth; that Tweed thereupon prosecuted a suit of sequestration in the circuit court for said one-fourth, and the same was taken possession of by the marshal, and bonded by said Tweed under order of the court: that on the 24th of April, 1866, General Canby, at Flanders' request, then seized the three-fourths, which had been delivered by Flanders to Tweed, by the troops under his command, and held it until the 15th of May, 1866, when Tweed was permitted to bond the said three-fourths in a suit to recover the same.

The court then finds the amount of the damages, from the diminished value of the cotton; the amount paid for storage and insurance and the amount necessarily paid in counsel fees, and that Flanders acted in obedience to the directions and special orders of the Secretary of the Treasury, and was admitted to have acted in good faith, and without malice.

This finding sets out that Mr. Tweed recovered his cotton in the two suits named therefor. These suits were No. 3,872 for 373 bales of cotton, and No. 3,857 for 123 bales, and the record in those suits is made part of the record in this.

The court will observe that there is in this case no question raised as to the jurisdiction of the court, and that no demurrer was filed; that there are no exceptions whatever to the admission or rejection of any evidence, or to any charge given or refused. Nor is there any assignment of errors.

Nothing, therefore, can be considered in this case, but whether this statement of facts shows that the court erred in rendering the judgment it did.

First. This statement shows that Tweed had recovered his property from the defendant by the judgment of the court in two other suits, determined in the Circuit Court of the United States for the District of Louisiana, between these parties, the record of which suits is made part of the record in this case.

Those suits determined Tweed's right, and that the defendant had wrongfully detained the property. Whether rightfully so determined can not be examined into here, for the reason that any error committed in such suits can not be examined in this suit. It could only be examined into by writ of error in those suits. But this statement of facts shows that Tweed bought the property at its market value, when the same was in Burbridge's possession, after he had been informed by him that there was no evidence that would lead to its condemnation, and that he might purchase it, and that he gave full value therefor. Record, p. 88.

That is equivalent to a finding of a purchase in good faith. Now, unless the naked fact that these Treasury agents had seized it "on the claim or pretense" (to use the language of the statement of facts), "that it was the property of the United States by capture, or as having been sold to the Confederate States Government, or as subject to forfeiture under

the acts of Congress," is a bar to any action of the owner therefor, against such officers for a wrongful seizure, then this special finding of the court is sufficient to put the rightful title and possession in Tweed, regardless of the judgment of the court to that effect in the two suits referred to.

In a brief prepared for, and filed in the case immediately preceding this, between these same parties, I have endeavored to show that these Treasury agents could not, of their own motion, seize said property, for the reason that it was the property of the United States by capture, or was property belonging to the Confederate Government, or as property subject to forfeiture under the laws of the United States. They could receive it from the military or naval forces, or the proper officers seizing it as such, but that they could not, on their own motion, seize property for such cause. See that brief, pp. 6 & 7.

Their duties were distinctly defined under the acts of March 12, 1863, and July 2, 1864, and in the circular letter of the Secretary of the Treasury of July 3, 1863. The Secretary of the Treasury was authorized by the 11th section of the act of 2nd of July, 1864, to make regulations to carry the act into effect, and these agents had no right, under this circular letter, or under any such regulation, to seize property which was not of the character set out in these acts. Their doing so was contrary to the spirit of such regulations, and to their instructions as found in this Treasury Department circular.

Second. It appears in this finding that Flanders asserted that the cotton was purchased under a special contract mad between Tweed and one O. H. Burbridge, a supervising special agent, which contract is found in the record, pp. 8, 9; and he claimed to hold one-fourth of the cotton under that contract, which claim Tweed resisted.

The court has found that this contract was revoked on the 23rd day of February, 1866, and that Tweed did not purchase the cotton until some time in March, 1866. Record, pp. 69, 70.

This contract provides that it is to be promptly submitted to the Secretary of the Treasury for his approval, and if approved it was to be subject at all times to revocation by the Secretary.

There is no evidence in the record that the Secretary ever approved of this contract, and I think that either with or without his approval, Burbridge had no authority to make it. Upon the statement of facts, nothing can be claimed under this contract, for the reason that the fact that Flanders claimed that it fell under that contract, did not authorize him to seize and hold it unless the property was of that character. I have said all I desire to say in reference to this contract in the brief on file in the case between these parties immediately preceding pp. 8 to 20, and to which I refer the court.

Third. It is possible that it may be claimed that there is error in relation to the damages, or to some part thereof. As to the amount of these damages, they are conclusively fixed by the statement of facts.

United States v. *King*, 7 How. 844.
Parks v. *Turner*, 12 How. 43, 44.
Bond v. *Brown*, 12 How. 255, 256.

In reference to this matter it will be observed that any and all equity of defense, that might otherwise arise with reference to these damages, is taken from the defendant, and from the Government, by the statement of facts in the case. The Government claimed this cotton as purchased under the contract with Tweed, and which entitled him to three-

fourths of it immediately, free of any internal revenue tax. It is not so found, but I think it appears in the record that Tweed paid this tax. It is a fact that he did pay it upon all this cotton, and has the receipts therefor. But after detaining it all a long time, Flanders determined to hold it under the contract and deliver Tweed three-fourths of it, and did so deliver it. After this, the defendant requests the military to seize this same three-fourths; and it is seized by Gen. Canby at the request of Flanders, on the 24th of April, and is held by the military under such new seizure until the 15th of May, 1866.

Now it does not appear that this damage did not all accrue in reference to these 372 bales of cotton, thus seized and held, after it had been determined that it belonged to Tweed, and had been delivered to him. Upon what ground, or for what cause, the military were called in to seize it, and directed by Mr. Flanders to hold it, does not appear. It was determined by the court that Tweed was entitled to it. Now, inasmuch as it does not appear how, or for what detention the court found this damage, the presumption that prevails in favor of a finding may well be sustained by referring it to this new seizure of the 372 bales. There is no pretense, anywhere in the record, that that was not wrongful.

Flanders pleaded a general denial in the suit brought to recover these 372 bales of cotton. (Record, p. 85.) But judgment was rendered for the plaintiff recognizing him as the lawful owner of the cotton which had been bonded by him under the order of court. (Record, p. 87.) Now, this suit is really defended by the United States, though Flanders is the defendant on the record, and no execution can issue against Flanders, and the judgment is to be paid from the proceeds

of captured and abandoned property, and the sums received from leases of property under the act of July 2, 1864.

See acts of July 28, 1866, 14 Statutes at Large, 329.

I know that it is found that Flanders acted under and in obedience to the directions of the Secretary of the Treasury, and in good faith, and without malice. The record does not show this, and I am inclined to think this finding was in kindness to Flanders and to bring him under the act of July 28, 1866. If he endeavored to carry out these laws in good faith, he was equitably entitled to be defended under them; and I do not complain of this finding. Here it is, and the parties to this record are bound by it. It does not find that in this second seizure of the 372 bales, the Secretary of the Treasury did not act without due consideration, or that the defendant did not act with great want of good judgment and prudence, or with gross neglect. There is nothing in the record, or in the statement of facts, which shows any probable cause for seizing these 372 bales. It was decided in another suit against the defendant that this seizure was unlawful, and though the record in that suit is a part of this, so found in the statement of facts, it shows no reasonable or probable cause for this second seizure; and, indeed, it shows no reasonable or probable cause for the long detention of the property before it was delivered.

The record in this case shows that Tweed purchased the cotton after he was informed, by the Treasury agent holding it, that there was no evidence against it, and that he did not purchase it under this contract. (Record, p. 88.)

All this was known to the defendant. The Secretary of the Treasury knew that the cotton was rapidly falling in price (Record, pp. 54, 56), and he authorized Flanders to deliver

these 372 bales to Tweed. (Record, p. 55.) This was on the 2nd of April, 1866. Flanders held it until the 20th of April, when he released these 372 bales. (Record, p. 57.) Now, four days afterward, without any special direction from the Secretary of the Treasury, as far as the record shows, Flanders got Gen. Canby to re-seize these 372 bales by the military forces under his charge—for what reason does not appear.

Thereupon the plaintiff, Tweed, is put to a suit to obtain possession of these 372 bales so released to him, and re-seized by the defendant, Flanders.

The damages allowed are the necessary result of the seizure and detention.

First. As to the reduced value. See:

Rowley v. *Gibbs*, 14 Johns. 386.
Suydam v. *Jenkins*, 3 Sandf. (S. C.) 644.
Young v. *Willet*, 8 Bosw. 492.
Woodham v. *Gelston*, 1 Johns. 137.
Gordon v. *Jenny*, 16 Mass. 470.
Cummings v. *Spruance*, 4 How. 320–321.
Haldeman v. *Beckwith*, 4 McLean, 397–399.

Second. So, too, as to storage and insurance. This item is always allowed, and there would seem to be no fair objection to it.

Third. As to counsel, fees, etc. See:

Dunning v. *Humphreys & Clark*, 24 Wend. 31.
The Apollon, 9 Wheat. 378.
Offut v. *Edwards*, 9 Rob. (La.) 94.
Littlejohn v. *Willcox*, 2 La. Ann. 620.

Penny v. *Taylor*, 5 La. Ann. 714.
Phelps v. *Coggeshall*, 13 Ann. 441.
Dickinson v. *Maynard*, 20 La. Ann. 67.
Whipple v. *Cumb. Man. Co.*, 2 Story, 665–671.
Hack v. *Neil*, 22 Texas, 253.
C. C. & C. R. R. Co. v. *Bartram*, 11 O. St. 457.
Jones v. *Doles*, 3 La. Ann. 589.
Norton v. Cammack, 10 La. Ann. 10, 11.
Gray v. *Lowe*, 11 La. Ann. 392.
Accessory Tr. Co. v. *McCarren*, 13 La. Ann. 214, 215.
Phillips v. *Bonham*, 16 La. Ann. 387.

I know that at common law, in actions sounding in tort, where there is no malice, the authorities do not agree as to counsel fees *in the suit being prosecuted*, to be recovered as a part of the damages in *that* suit. Possibly the better rule in such a case is against such recovery, though it will be found that there are very many authorities to favor these damages. See cases cited above. One reason why these damages are not allowed in such cases is, that the damages must be estimated as of the time when the suit was commenced; and as the counsel fees have not then accrued, and must necessarily be very uncertain, they are rejected.

Feese v. *Huntington*, 23 How. 8, 9.

In patent cases the court may enter judgment for treble damages, and for this reason these fees should not be allowed by the jury.

But it will be noted that the counsel fees allowed in this case are not for fees in this suit, but for counsel fees in the two suits of sequestration previously decided, and actually accrued and determined. Those fees were the natural, inevit-

able and direct consequence of this illegal detention. They are recoverable even at common law upon the general principle which regulates the recovery of such damages as the natural and necessary consequence of the unlawful act. In the civil law such damages are allowed in the suit being prosecuted.

Stimpson v. *The Railroads*, 1 Wall. Jr. 167.
C. C. & R R. Co. v. *Bartram*, 11 O. St. 457.
The Apollon, 9 Wheat. 378.
Day v. *Woodworth et al.* 13 How. 371, 372.
Offut v. *Edwards*, 9 Rob. (La.) 94.
Littlejohn v. *Wilcox*, 2 La. Ann. 620.
Jones v. *Doles*, 3 La. Ann. 588.
Penny v. *Taylor*, 5 La. Ann. 714
Norton v. *Cammack*, 10 La. Ann. 10, 11.
Gray v. *Lowe*, 11 La. Ann. 392.
Accessory Tr. Co. v. *McCarren*, 13 La. Ann. 214, 215.
Phelps v. *Coggeshall*, 13 La. Ann. 441.
Phillips v. *Bonham*, 16 La. Ann. 387.
Dickinson v. *Maynard*, 20 La. Ann. 67.

This was a transaction occurri[illegible]

In such cases, these fees and the costs of such previous suit paid by the plaintiff, are recoverable at common law, as compensatory damages.

Seay v. *Greenwood*, 21 Ala. 476.
Ferguson v. *Barber*, 24 Ala. 406.
Roberts v. *Heim*, 27 Ala. 683.
Dunning v. *Humphrey & Clark*, 24 Wend. 31.
Offut v. *Edwards*, 9 Rob. 94.
Littlejohn v. *Wilcox*, 2 La. Ann. 620.

Penny v. *Taylor*, 5 La. Ann. 714.
Phelps v. *Coggeshall*, 13 Ann. 441.
Dickinson v. *Maynard*, 20 La. Ann. 67.
Whipple v. *Cumb. Man. Co.*, 2 Story, 665–671.
Hack v. *Neil*, 22 Texas, 253.
C. C. & C. R. R. Co. v. *Bartram*, 11 O. St. 457.
Jones v. *Doles*, 3 La. Ann. 589.
Norton v. Cammack, 10 La. Ann. 10, 11.
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This was a transaction occurring in Louisiana, where the civil law prevails; and it is well settled in that state that such damages are allowable in this class of cases. See cases last cited. Several of these Louisiana cases were precisely like the one under consideration in reference to this item.

It being a Louisiana transaction, the laws of that state, as settled by the highest courts thereof, are the rule of decision in this court.

Green v. *Lessee of Neal*, 6 Pets. 297, 298.
Elmendorf v. *Taylor*, 10 Wheat. 159.
Swift v. *Tyson*, 16 Pets. 18, 19.

It is a rule of damages fixed by the general law of Louisiana by repeated decisions of the court of last resort in that state, a rule of law of long standing, and applicable to an act done in that state. Clearly this rule of Louisiana law governs this case in relation to this item.

This question, however, involves but this one item, and does not involve the whole judgment; and if there is error in the judgment in this particular, the judgment would be affirmed as to the other items, and reversed as to this. It is a distinct and definite amount, and can be remitted without affecting the balance of the judgment.

But there is another consideration that puts an end to all questions raised in the case. The statement of facts was filed May 29, 1868. The writ of error was sued out and filed in court on the 12th of March, 1868, and served upon Tweed the next day. This is two ~~weeks~~ months and seventeen days before this statement of facts was filed. It does not appear that this was by consent. That statement is, therefore, a mere nullity, and can not be regarded by the court.

Genneres v. *Bonnemer*, 7 Wall. 565.

In this confused mass of a record I had not noticed these dates till now.

The court will therefore find that there is no question in the case that it can consider, and the judgment of the circuit court must be affirmed.

T. D. LINCOLN,
of Counsel for Defendant in Error.